



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5659

by Rep. Lawrence Walsh, Jr.

SYNOPSIS AS INTRODUCED:

225 ILCS 85/30

from Ch. 111, par. 4150

225 ILCS 85/35.22 new

Amends the Pharmacy Practice Act. Provides that the Department of Financial and Professional Regulation may refuse to issue or renew a license, may revoke a license, or may suspend, place on probation, fine, or take any disciplinary or non-disciplinary action against a license subject to the approval of the Disciplinary Review Board (rather than as the Department may deem proper). Creates the Disciplinary Review Board to approve findings and actions taken by the Department in regard to disciplinary matters under the Act. Provides that the Department may not deny an application for licensure or take any other disciplinary or non-disciplinary action against a license without approval from the Disciplinary Review Board. Effective immediately.

LRB101 17646 SPS 67073 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 Pharmacy Practice Act is amended by changing
5 Section 30 and by adding Section 35.22 as follows:

6 (225 ILCS 85/30) (from Ch. 111, par. 4150)

7 (Section scheduled to be repealed on January 1, 2023)

8 Sec. 30. Refusal, revocation, suspension, or other
9 discipline.

10 (a) The Department may refuse to issue or renew, or may
11 revoke a license, or may suspend, place on probation, fine, or
12 take any disciplinary or non-disciplinary action, subject to
13 the approval of the Disciplinary Review Board ~~as the Department~~
14 ~~may deem proper~~, including fines not to exceed \$10,000 for each
15 violation, with regard to any licensee for any one or
16 combination of the following causes:

17 1. Material misstatement in furnishing information to
18 the Department.

19 2. Violations of this Act, or the rules promulgated
20 hereunder.

21 3. Making any misrepresentation for the purpose of
22 obtaining licenses.

23 4. A pattern of conduct which demonstrates

1 incompetence or unfitness to practice.

2 5. Aiding or assisting another person in violating any
3 provision of this Act or rules.

4 6. Failing, within 60 days, to respond to a written
5 request made by the Department for information.

6 7. Engaging in unprofessional, dishonorable, or
7 unethical conduct of a character likely to deceive, defraud
8 or harm the public.

9 8. Adverse action taken by another state or
10 jurisdiction against a license or other authorization to
11 practice as a pharmacy, pharmacist, registered certified
12 pharmacy technician, or registered pharmacy technician
13 that is the same or substantially equivalent to those set
14 forth in this Section, a certified copy of the record of
15 the action taken by the other state or jurisdiction being
16 prima facie evidence thereof.

17 9. Directly or indirectly giving to or receiving from
18 any person, firm, corporation, partnership, or association
19 any fee, commission, rebate or other form of compensation
20 for any professional services not actually or personally
21 rendered. Nothing in this item 9 affects any bona fide
22 independent contractor or employment arrangements among
23 health care professionals, health facilities, health care
24 providers, or other entities, except as otherwise
25 prohibited by law. Any employment arrangements may include
26 provisions for compensation, health insurance, pension, or

1 other employment benefits for the provision of services
2 within the scope of the licensee's practice under this Act.
3 Nothing in this item 9 shall be construed to require an
4 employment arrangement to receive professional fees for
5 services rendered.

6 10. A finding by the Department that the licensee,
7 after having his license placed on probationary status has
8 violated the terms of probation.

9 11. Selling or engaging in the sale of drug samples
10 provided at no cost by drug manufacturers.

11 12. Physical illness, including but not limited to,
12 deterioration through the aging process, or loss of motor
13 skill which results in the inability to practice the
14 profession with reasonable judgment, skill or safety.

15 13. A finding that licensure or registration has been
16 applied for or obtained by fraudulent means.

17 14. Conviction by plea of guilty or nolo contendere,
18 finding of guilt, jury verdict, or entry of judgment or
19 sentencing, including, but not limited to, convictions,
20 preceding sentences of supervision, conditional discharge,
21 or first offender probation, under the laws of any
22 jurisdiction of the United States that is (i) a felony or
23 (ii) a misdemeanor, an essential element of which is
24 dishonesty, or that is directly related to the practice of
25 pharmacy.

26 15. Habitual or excessive use or addiction to alcohol,

1 narcotics, stimulants or any other chemical agent or drug
2 which results in the inability to practice with reasonable
3 judgment, skill or safety.

4 16. Willfully making or filing false records or reports
5 in the practice of pharmacy, including, but not limited to
6 false records to support claims against the medical
7 assistance program of the Department of Healthcare and
8 Family Services (formerly Department of Public Aid) under
9 the Public Aid Code.

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

18 18. Dispensing prescription drugs without receiving a
19 written or oral prescription in violation of law.

20 19. Upon a finding of a substantial discrepancy in a
21 Department audit of a prescription drug, including
22 controlled substances, as that term is defined in this Act
23 or in the Illinois Controlled Substances Act.

24 20. Physical or mental illness or any other impairment
25 or disability, including, without limitation: (A)
26 deterioration through the aging process or loss of motor

1 skills that results in the inability to practice with
2 reasonable judgment, skill or safety; or (B) mental
3 incompetence, as declared by a court of competent
4 jurisdiction.

5 21. Violation of the Health Care Worker Self-Referral
6 Act.

7 22. Failing to sell or dispense any drug, medicine, or
8 poison in good faith. "Good faith", for the purposes of
9 this Section, has the meaning ascribed to it in subsection
10 (u) of Section 102 of the Illinois Controlled Substances
11 Act. "Good faith", as used in this item (22), shall not be
12 limited to the sale or dispensing of controlled substances,
13 but shall apply to all prescription drugs.

14 23. Interfering with the professional judgment of a
15 pharmacist by any licensee under this Act, or the
16 licensee's agents or employees.

17 24. Failing to report within 60 days to the Department
18 any adverse final action taken against a pharmacy,
19 pharmacist, registered pharmacy technician, or registered
20 certified pharmacy technician by another licensing
21 jurisdiction in any other state or any territory of the
22 United States or any foreign jurisdiction, any
23 governmental agency, any law enforcement agency, or any
24 court for acts or conduct similar to acts or conduct that
25 would constitute grounds for discipline as defined in this
26 Section.

1 25. Failing to comply with a subpoena issued in
2 accordance with Section 35.5 of this Act.

3 26. Disclosing protected health information in
4 violation of any State or federal law.

5 27. Willfully failing to report an instance of
6 suspected abuse, neglect, financial exploitation, or
7 self-neglect of an eligible adult as defined in and
8 required by the Adult Protective Services Act.

9 28. Being named as an abuser in a verified report by
10 the Department on Aging under the Adult Protective Services
11 Act, and upon proof by clear and convincing evidence that
12 the licensee abused, neglected, or financially exploited
13 an eligible adult as defined in the Adult Protective
14 Services Act.

15 29. Using advertisements or making solicitations that
16 may jeopardize the health, safety, or welfare of patients,
17 including, but not be limited to, the use of advertisements
18 or solicitations that:

19 (A) are false, fraudulent, deceptive, or
20 misleading; or

21 (B) include any claim regarding a professional
22 service or product or the cost or price thereof that
23 cannot be substantiated by the licensee.

24 30. Requiring a pharmacist to participate in the use or
25 distribution of advertisements or in making solicitations
26 that may jeopardize the health, safety, or welfare of

1 patients.

2 31. Failing to provide a working environment for all
3 pharmacy personnel that protects the health, safety, and
4 welfare of a patient, which includes, but is not limited
5 to, failing to:

6 (A) employ sufficient personnel to prevent
7 fatigue, distraction, or other conditions that
8 interfere with a pharmacist's ability to practice with
9 competency and safety or creates an environment that
10 jeopardizes patient care;

11 (B) provide appropriate opportunities for
12 uninterrupted rest periods and meal breaks;

13 (C) provide adequate time for a pharmacist to
14 complete professional duties and responsibilities,
15 including, but not limited to:

16 (i) drug utilization review;

17 (ii) immunization;

18 (iii) counseling;

19 (iv) verification of the accuracy of a
20 prescription; and

21 (v) all other duties and responsibilities of a
22 pharmacist as listed in the rules of the
23 Department.

24 32. Introducing or enforcing external factors, such as
25 productivity or production quotas or other programs
26 against pharmacists, student pharmacists or pharmacy

1 technicians, to the extent that they interfere with the
2 ability of those individuals to provide appropriate
3 professional services to the public.

4 33. Providing an incentive for or inducing the transfer
5 of a prescription for a patient absent a professional
6 rationale.

7 (b) The Department may refuse to issue or may suspend the
8 license of any person who fails to file a return, or to pay the
9 tax, penalty or interest shown in a filed return, or to pay any
10 final assessment of tax, penalty or interest, as required by
11 any tax Act administered by the Illinois Department of Revenue,
12 until such time as the requirements of any such tax Act are
13 satisfied.

14 (c) The Department shall revoke any license issued under
15 the provisions of this Act or any prior Act of this State of
16 any person who has been convicted a second time of committing
17 any felony under the Illinois Controlled Substances Act, or who
18 has been convicted a second time of committing a Class 1 felony
19 under Sections 8A-3 and 8A-6 of the Illinois Public Aid Code. A
20 person whose license issued under the provisions of this Act or
21 any prior Act of this State is revoked under this subsection
22 (c) shall be prohibited from engaging in the practice of
23 pharmacy in this State.

24 (d) Fines may be imposed in conjunction with other forms of
25 disciplinary action, but shall not be the exclusive disposition
26 of any disciplinary action arising out of conduct resulting in

1 death or injury to a patient. Fines shall be paid within 60
2 days or as otherwise agreed to by the Department. Any funds
3 collected from such fines shall be deposited in the Illinois
4 State Pharmacy Disciplinary Fund.

5 (e) The entry of an order or judgment by any circuit court
6 establishing that any person holding a license or certificate
7 under this Act is a person in need of mental treatment operates
8 as a suspension of that license. A licensee may resume his or
9 her practice only upon the entry of an order of the Department
10 based upon a finding by the Board that he or she has been
11 determined to be recovered from mental illness by the court and
12 upon the Board's recommendation that the licensee be permitted
13 to resume his or her practice.

14 (f) The Department shall issue quarterly to the Board a
15 status of all complaints related to the profession received by
16 the Department.

17 (g) In enforcing this Section, the Board or the Department,
18 upon a showing of a possible violation, may compel any licensee
19 or applicant for licensure under this Act to submit to a mental
20 or physical examination or both, as required by and at the
21 expense of the Department. The examining physician, or
22 multidisciplinary team involved in providing physical and
23 mental examinations led by a physician consisting of one or a
24 combination of licensed physicians, licensed clinical
25 psychologists, licensed clinical social workers, licensed
26 clinical professional counselors, and other professional and

1 administrative staff, shall be those specifically designated
2 by the Department. The Board or the Department may order the
3 examining physician or any member of the multidisciplinary team
4 to present testimony concerning this mental or physical
5 examination of the licensee or applicant. No information,
6 report, or other documents in any way related to the
7 examination shall be excluded by reason of any common law or
8 statutory privilege relating to communication between the
9 licensee or applicant and the examining physician or any member
10 of the multidisciplinary team. The individual to be examined
11 may have, at his or her own expense, another physician of his
12 or her choice present during all aspects of the examination.
13 Failure of any individual to submit to a mental or physical
14 examination when directed shall result in the automatic
15 suspension of his or her license until such time as the
16 individual submits to the examination. If the Board or
17 Department finds a pharmacist, registered certified pharmacy
18 technician, or registered pharmacy technician unable to
19 practice because of the reasons set forth in this Section, the
20 Board or Department shall require such pharmacist, registered
21 certified pharmacy technician, or registered pharmacy
22 technician to submit to care, counseling, or treatment by
23 physicians or other appropriate health care providers approved
24 or designated by the Department as a condition for continued,
25 restored, or renewed licensure to practice. Any pharmacist,
26 registered certified pharmacy technician, or registered

1 pharmacy technician whose license was granted, continued,
2 restored, renewed, disciplined, or supervised, subject to such
3 terms, conditions, or restrictions, and who fails to comply
4 with such terms, conditions, or restrictions or to complete a
5 required program of care, counseling, or treatment, as
6 determined by the chief pharmacy coordinator, shall be referred
7 to the Secretary for a determination as to whether the licensee
8 shall have his or her license suspended immediately, pending a
9 hearing by the Board. In instances in which the Secretary
10 immediately suspends a license under this subsection (g), a
11 hearing upon such person's license must be convened by the
12 Board within 15 days after such suspension and completed
13 without appreciable delay. The Department and Board shall have
14 the authority to review the subject pharmacist's, registered
15 certified pharmacy technician's, or registered pharmacy
16 technician's record of treatment and counseling regarding the
17 impairment.

18 (h) An individual or organization acting in good faith, and
19 not in a willful and wanton manner, in complying with this
20 Section by providing a report or other information to the
21 Board, by assisting in the investigation or preparation of a
22 report or information, by participating in proceedings of the
23 Board, or by serving as a member of the Board shall not, as a
24 result of such actions, be subject to criminal prosecution or
25 civil damages. Any person who reports a violation of this
26 Section to the Department is protected under subsection (b) of

1 Section 15 of the Whistleblower Act.

2 (i) Members of the Board shall have no liability in any
3 action based upon any disciplinary proceedings or other
4 activity performed in good faith as a member of the Board. The
5 Attorney General shall defend all such actions unless he or she
6 determines either that there would be a conflict of interest in
7 such representation or that the actions complained of were not
8 in good faith or were willful and wanton.

9 If the Attorney General declines representation, the
10 member shall have the right to employ counsel of his or her
11 choice, whose fees shall be provided by the State, after
12 approval by the Attorney General, unless there is a
13 determination by a court that the member's actions were not in
14 good faith or were willful and wanton.

15 The member must notify the Attorney General within 7 days
16 of receipt of notice of the initiation of any action involving
17 services of the Board. Failure to so notify the Attorney
18 General shall constitute an absolute waiver of the right to a
19 defense and indemnification.

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

23 (Source: P.A. 100-497, eff. 9-8-17; 101-621, eff. 1-1-20.)

24 (225 ILCS 85/35.22 new)

25 Sec. 35.22. Disciplinary Review Board.

1 (a) There is created in the Department the Disciplinary
2 Review Board to approve findings and actions taken by the
3 Department in regard to disciplinary matters under Section 30
4 of this Act. The Disciplinary Review Board shall consist of 9
5 members selected by the Governor from a list of recommendations
6 submitted by the Association of Indian American Pharmacists,
7 the Illinois Pharmacists Association, and the Illinois Retail
8 Merchants Association. The result of any disciplinary hearing
9 brought under this Act must be approved by the Disciplinary
10 Review Board before a report is submitted to the Department.

11 (b) The Department may not deny an application for
12 licensure or take any other disciplinary or non-disciplinary
13 action against a license without approval from the Disciplinary
14 Review Board.

15 (c) The Disciplinary Review Board shall review decisions
16 involving the refusal to issue or renew a license or decisions
17 to take disciplinary action against a license. The Disciplinary
18 Review Board shall review decisions issued no more than 18
19 months prior to the effective date of this amendatory Act of
20 the 101st General Assembly.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.