



Sen. James F. Clayborne Jr.

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09300SB2354sam001

LRB093 20592 LCB 49430 a

1 AMENDMENT TO SENATE BILL 2354

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2354 by replacing  
3 everything after the enacting clause with the following:

4 "ARTICLE 1.

5 Section 1-1. Legislative findings. The General Assembly  
6 finds that:

7 1. Illinois is in the midst of a medical malpractice  
8 insurance crisis of unprecedented magnitude.

9 2. Illinois is among the states with the highest  
10 medical malpractice insurance premiums in the nation.

11 3. Medical Malpractice insurance in Illinois is  
12 unavailable or unaffordable for many hospitals and  
13 physicians.

14 4. The high and increasing cost of medical malpractice  
15 insurance in Illinois is causing health care providers to  
16 eliminate or reduce the provision of medical care  
17 throughout the State.

18 5. The crisis is discouraging medical students from  
19 choosing Illinois as the place they will receive their  
20 medical education and practice medicine.

21 6. The increase in medical malpractice liability  
22 insurance rates is forcing physicians to practice medicine  
23 without professional liability insurance, to leave  
24 Illinois, to not perform high-risk procedures, or to retire

1 early from the practice of medicine.

2 7. The high and increasing cost of medical malpractice  
3 insurance is due in large part to the inefficiency and  
4 unpredictability of adjudicating claims through the civil  
5 justice system.

6 8. Much of this inefficiency stems from the time and  
7 resources needlessly spent on valuing uncertain and  
8 unpredictable claims of medical negligence.

9 9. The public would benefit by making medical liability  
10 coverage for hospitals and physicians more affordable,  
11 which would make health care more available.

12 ARTICLE 3.

13 Section 3-5. The Medical Practice Act of 1987 is amended by  
14 changing Sections 7, 22, and 23 as follows:

15 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

16 (Section scheduled to be repealed on January 1, 2007)

17 Sec. 7. Medical Disciplinary Board.

18 (A) There is hereby created the Illinois State Medical  
19 Disciplinary Board (hereinafter referred to as the  
20 "Disciplinary Board"). The Disciplinary Board shall consist of  
21 9 members, to be appointed by the Governor by and with the  
22 advice and consent of the Senate. All shall be residents of the  
23 State, not more than 5 of whom shall be members of the same  
24 political party. Five members shall be physicians licensed to  
25 practice medicine in all of its branches in Illinois possessing  
26 the degree of doctor of medicine. Two shall be members of the  
27 public, who shall not be engaged in any way, directly or  
28 indirectly, as providers of health care. The 2 public members  
29 shall act as voting members. One member shall be a physician  
30 licensed to practice in Illinois possessing the degree of  
31 doctor of osteopathy or osteopathic medicine. One member shall

1 be a physician licensed to practice in Illinois and possessing  
2 the degree of doctor of chiropractic.

3 (B) Members of the Disciplinary Board shall be appointed  
4 for terms of 4 years. Upon the expiration of the term of any  
5 member, their successor shall be appointed for a term of 4  
6 years by the Governor by and with the advice and consent of the  
7 Senate. The Governor shall fill any vacancy for the remainder  
8 of the unexpired term by and with the advice and consent of the  
9 Senate. Upon recommendation of the Board, any member of the  
10 Disciplinary Board may be removed by the Governor for  
11 misfeasance, malfeasance, or wilful neglect of duty, after  
12 notice, and a public hearing, unless such notice and hearing  
13 shall be expressly waived in writing. Each member shall serve  
14 on the Disciplinary Board until their successor is appointed  
15 and qualified. No member of the Disciplinary Board shall serve  
16 more than 2 consecutive 4 year terms.

17 In making appointments the Governor shall attempt to insure  
18 that the various social and geographic regions of the State of  
19 Illinois are properly represented.

20 In making the designation of persons to act for the several  
21 professions represented on the Disciplinary Board, the  
22 Governor shall give due consideration to recommendations by  
23 members of the respective professions and by organizations  
24 therein.

25 (C) The Disciplinary Board shall annually elect one of its  
26 voting members as chairperson and one as vice chairperson. No  
27 officer shall be elected more than twice in succession to the  
28 same office. Each officer shall serve until their successor has  
29 been elected and qualified.

30 (D) (Blank).

31 (E) Four voting members of the Disciplinary Board shall  
32 constitute a quorum. A vacancy in the membership of the  
33 Disciplinary Board shall not impair the right of a quorum to  
34 exercise all the rights and perform all the duties of the

1 Disciplinary Board. Any action taken by the Disciplinary Board  
2 under this Act may be authorized by resolution at any regular  
3 or special meeting and each such resolution shall take effect  
4 immediately. The Disciplinary Board shall meet at least  
5 quarterly. The Disciplinary Board is empowered to adopt all  
6 rules and regulations necessary and incident to the powers  
7 granted to it under this Act.

8 (F) Each member, and member-officer, of the Disciplinary  
9 Board shall receive a per diem stipend as the Director of the  
10 Department, hereinafter referred to as the Director, shall  
11 determine. The Director shall also determine the per diem  
12 stipend that each ex-officio member shall receive. Each member  
13 shall be paid their necessary expenses while engaged in the  
14 performance of their duties.

15 (G) The Director shall select a Chief Medical Coordinator  
16 and up to 3 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~ who shall  
17 not be members of the Disciplinary Board. Each medical  
18 coordinator shall be a physician licensed to practice medicine  
19 in all of its branches, and the Director shall set their rates  
20 of compensation. The Director shall assign at least one medical  
21 coordinator to a region composed of Cook County and such other  
22 counties as the Director may deem appropriate, and such medical  
23 coordinators ~~coordinator~~ shall locate their office in Chicago.  
24 The Director shall assign at least one ~~the remaining~~ medical  
25 coordinator to regions to cover ~~a region composed of~~ the  
26 balance of counties in the State, and such medical coordinators  
27 ~~coordinator~~ shall locate their office in Springfield. Each  
28 medical coordinator shall be the chief enforcement officer of  
29 this Act in their assigned region and shall serve at the will  
30 of the Disciplinary Board.

31 The Director shall employ, in conformity with the Personnel  
32 Code, not less than one full time investigator for every 3000  
33 ~~5000~~ physicians licensed in the State and such other fulltime  
34 investigators as the Director deems necessary. Each

1 investigator shall be a college graduate with at least 2 years'  
2 investigative experience or one year advanced medical  
3 education. Upon the written request of the Disciplinary Board,  
4 the Director shall employ, in conformity with the Personnel  
5 Code, such other professional, technical, investigative, and  
6 clerical help, either on a full or part-time basis as the  
7 Disciplinary Board deems necessary for the proper performance  
8 of its duties.

9 (H) Upon the specific request of the Disciplinary Board,  
10 signed by either the chairman, vice chairman, or a medical  
11 coordinator of the Disciplinary Board, the Department of Human  
12 Services or the Department of State Police shall make available  
13 any and all information that they have in their possession  
14 regarding a particular case then under investigation by the  
15 Disciplinary Board.

16 (I) Members of the Disciplinary Board shall be immune from  
17 suit in any action based upon any disciplinary proceedings or  
18 other acts performed in good faith as members of the  
19 Disciplinary Board.

20 (J) The Disciplinary Board may compile and establish a  
21 statewide roster of physicians and other medical  
22 professionals, including the several medical specialties, of  
23 such physicians and medical professionals, who have agreed to  
24 serve from time to time as advisors to the medical  
25 coordinators. Such advisors shall assist the medical  
26 coordinators in their investigations and participation in  
27 complaints against physicians. Such advisors shall serve under  
28 contract and shall be reimbursed at a reasonable rate for the  
29 services provided, plus reasonable expenses incurred. While  
30 serving in this capacity, the advisor, for any act undertaken  
31 in good faith and in the conduct of their duties under this  
32 Section, shall be immune from civil suit.

33 (Source: P.A. 93-138, eff. 7-10-03.)

1 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

3 Sec. 22. Disciplinary action.

4 (A) The Department may revoke, suspend, place on  
5 probationary status, or take any other disciplinary action as  
6 the Department may deem proper with regard to the license or  
7 visiting professor permit of any person issued under this Act  
8 to practice medicine, or to treat human ailments without the  
9 use of drugs and without operative surgery upon any of the  
10 following grounds:

11 (1) Performance of an elective abortion in any place,  
12 locale, facility, or institution other than:

13 (a) a facility licensed pursuant to the Ambulatory  
14 Surgical Treatment Center Act;

15 (b) an institution licensed under the Hospital  
16 Licensing Act; or

17 (c) an ambulatory surgical treatment center or  
18 hospitalization or care facility maintained by the  
19 State or any agency thereof, where such department or  
20 agency has authority under law to establish and enforce  
21 standards for the ambulatory surgical treatment  
22 centers, hospitalization, or care facilities under its  
23 management and control; or

24 (d) ambulatory surgical treatment centers,  
25 hospitalization or care facilities maintained by the  
26 Federal Government; or

27 (e) ambulatory surgical treatment centers,  
28 hospitalization or care facilities maintained by any  
29 university or college established under the laws of  
30 this State and supported principally by public funds  
31 raised by taxation.

32 (2) Performance of an abortion procedure in a wilful  
33 and wanton manner on a woman who was not pregnant at the  
34 time the abortion procedure was performed.

1           (3) The conviction of a felony in this or any other  
2 jurisdiction, except as otherwise provided in subsection B  
3 of this Section, whether or not related to practice under  
4 this Act, or the entry of a guilty or nolo contendere plea  
5 to a felony charge.

6           (4) Gross negligence in practice under this Act.

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

10          (6) Obtaining any fee by fraud, deceit, or  
11 misrepresentation.

12          (7) Habitual or excessive use or abuse of drugs defined  
13 in law as controlled substances, of alcohol, or of any  
14 other substances which results in the inability to practice  
15 with reasonable judgment, skill or safety.

16          (8) Practicing under a false or, except as provided by  
17 law, an assumed name.

18          (9) Fraud or misrepresentation in applying for, or  
19 procuring, a license under this Act or in connection with  
20 applying for renewal of a license under this Act.

21          (10) Making a false or misleading statement regarding  
22 their skill or the efficacy or value of the medicine,  
23 treatment, or remedy prescribed by them at their direction  
24 in the treatment of any disease or other condition of the  
25 body or mind.

26          (11) Allowing another person or organization to use  
27 their license, procured under this Act, to practice.

28          (12) Disciplinary action of another state or  
29 jurisdiction against a license or other authorization to  
30 practice as a medical doctor, doctor of osteopathy, doctor  
31 of osteopathic medicine or doctor of chiropractic, a  
32 certified copy of the record of the action taken by the  
33 other state or jurisdiction being prima facie evidence  
34 thereof.

1           (13) Violation of any provision of this Act or of the  
2 Medical Practice Act prior to the repeal of that Act, or  
3 violation of the rules, or a final administrative action of  
4 the Director, after consideration of the recommendation of  
5 the Disciplinary Board.

6           (14) Dividing with anyone other than physicians with  
7 whom the licensee practices in a partnership, Professional  
8 Association, limited liability company, or Medical or  
9 Professional Corporation any fee, commission, rebate or  
10 other form of compensation for any professional services  
11 not actually and personally rendered. Nothing contained in  
12 this subsection prohibits persons holding valid and  
13 current licenses under this Act from practicing medicine in  
14 partnership under a partnership agreement, including a  
15 limited liability partnership, in a limited liability  
16 company under the Limited Liability Company Act, in a  
17 corporation authorized by the Medical Corporation Act, as  
18 an association authorized by the Professional Association  
19 Act, or in a corporation under the Professional Corporation  
20 Act or from pooling, sharing, dividing or apportioning the  
21 fees and monies received by them or by the partnership,  
22 corporation or association in accordance with the  
23 partnership agreement or the policies of the Board of  
24 Directors of the corporation or association. Nothing  
25 contained in this subsection prohibits 2 or more  
26 corporations authorized by the Medical Corporation Act,  
27 from forming a partnership or joint venture of such  
28 corporations, and providing medical, surgical and  
29 scientific research and knowledge by employees of these  
30 corporations if such employees are licensed under this Act,  
31 or from pooling, sharing, dividing, or apportioning the  
32 fees and monies received by the partnership or joint  
33 venture in accordance with the partnership or joint venture  
34 agreement. Nothing contained in this subsection shall



1 abrogate the right of 2 or more persons, holding valid and  
2 current licenses under this Act, to each receive adequate  
3 compensation for concurrently rendering professional  
4 services to a patient and divide a fee; provided, the  
5 patient has full knowledge of the division, and, provided,  
6 that the division is made in proportion to the services  
7 performed and responsibility assumed by each.

8 (15) A finding by the Medical Disciplinary Board that  
9 the registrant after having his or her license placed on  
10 probationary status or subjected to conditions or  
11 restrictions violated the terms of the probation or failed  
12 to comply with such terms or conditions.

13 (16) Abandonment of a patient.

14 (17) Prescribing, selling, administering,  
15 distributing, giving or self-administering any drug  
16 classified as a controlled substance (designated product)  
17 or narcotic for other than medically accepted therapeutic  
18 purposes.

19 (18) Promotion of the sale of drugs, devices,  
20 appliances or goods provided for a patient in such manner  
21 as to exploit the patient for financial gain of the  
22 physician.

23 (19) Offering, undertaking or agreeing to cure or treat  
24 disease by a secret method, procedure, treatment or  
25 medicine, or the treating, operating or prescribing for any  
26 human condition by a method, means or procedure which the  
27 licensee refuses to divulge upon demand of the Department.

28 (20) Immoral conduct in the commission of any act  
29 including, but not limited to, commission of an act of  
30 sexual misconduct related to the licensee's practice.

31 (21) Wilfully making or filing false records or reports  
32 in his or her practice as a physician, including, but not  
33 limited to, false records to support claims against the  
34 medical assistance program of the Department of Public Aid

1 under the Illinois Public Aid Code.

2 (22) Wilful omission to file or record, or wilfully  
3 impeding the filing or recording, or inducing another  
4 person to omit to file or record, medical reports as  
5 required by law, or wilfully failing to report an instance  
6 of suspected abuse or neglect as required by law.

7 (23) Being named as a perpetrator in an indicated  
8 report by the Department of Children and Family Services  
9 under the Abused and Neglected Child Reporting Act, and  
10 upon proof by clear and convincing evidence that the  
11 licensee has caused a child to be an abused child or  
12 neglected child as defined in the Abused and Neglected  
13 Child Reporting Act.

14 (24) Solicitation of professional patronage by any  
15 corporation, agents or persons, or profiting from those  
16 representing themselves to be agents of the licensee.

17 (25) Gross and wilful and continued overcharging for  
18 professional services, including filing false statements  
19 for collection of fees for which services are not rendered,  
20 including, but not limited to, filing such false statements  
21 for collection of monies for services not rendered from the  
22 medical assistance program of the Department of Public Aid  
23 under the Illinois Public Aid Code.

24 (26) A pattern of practice or other behavior which  
25 demonstrates incapacity or incompetence to practice under  
26 this Act.

27 (27) Mental illness or disability which results in the  
28 inability to practice under this Act with reasonable  
29 judgment, skill or safety.

30 (28) Physical illness, including, but not limited to,  
31 deterioration through the aging process, or loss of motor  
32 skill which results in a physician's inability to practice  
33 under this Act with reasonable judgment, skill or safety.

34 (29) Cheating on or attempt to subvert the licensing

1 examinations administered under this Act.

2 (30) Wilfully or negligently violating the  
3 confidentiality between physician and patient except as  
4 required by law.

5 (31) The use of any false, fraudulent, or deceptive  
6 statement in any document connected with practice under  
7 this Act.

8 (32) Aiding and abetting an individual not licensed  
9 under this Act in the practice of a profession licensed  
10 under this Act.

11 (33) Violating state or federal laws or regulations  
12 relating to controlled substances.

13 (34) Failure to report to the Department any adverse  
14 final action taken against them by another licensing  
15 jurisdiction (any other state or any territory of the  
16 United States or any foreign state or country), by any peer  
17 review body, by any health care institution, by any  
18 professional society or association related to practice  
19 under this Act, by any governmental agency, by any law  
20 enforcement agency, or by any court for acts or conduct  
21 similar to acts or conduct which would constitute grounds  
22 for action as defined in this Section.

23 (35) Failure to report to the Department surrender of a  
24 license or authorization to practice as a medical doctor, a  
25 doctor of osteopathy, a doctor of osteopathic medicine, or  
26 doctor of chiropractic in another state or jurisdiction, or  
27 surrender of membership on any medical staff or in any  
28 medical or professional association or society, while  
29 under disciplinary investigation by any of those  
30 authorities or bodies, for acts or conduct similar to acts  
31 or conduct which would constitute grounds for action as  
32 defined in this Section.

33 (36) Failure to report to the Department any adverse  
34 judgment, settlement, or award arising from a liability

1 claim related to acts or conduct similar to acts or conduct  
2 which would constitute grounds for action as defined in  
3 this Section.

4 (37) Failure to transfer copies of medical records as  
5 required by law.

6 (38) Failure to furnish the Department, its  
7 investigators or representatives, relevant information,  
8 legally requested by the Department after consultation  
9 with the Chief Medical Coordinator or the Deputy Medical  
10 Coordinator.

11 (39) Violating the Health Care Worker Self-Referral  
12 Act.

13 (40) Willful failure to provide notice when notice is  
14 required under the Parental Notice of Abortion Act of 1995.

15 (41) Failure to establish and maintain records of  
16 patient care and treatment as required by this law.

17 (42) Entering into an excessive number of written  
18 collaborative agreements with licensed advanced practice  
19 nurses resulting in an inability to adequately collaborate  
20 and provide medical direction.

21 (43) Repeated failure to adequately collaborate with  
22 or provide medical direction to a licensed advanced  
23 practice nurse.

24 All proceedings to suspend, revoke, place on probationary  
25 status, or take any other disciplinary action as the Department  
26 may deem proper, with regard to a license on any of the  
27 foregoing grounds, must be commenced within 3 years next after  
28 receipt by the Department of a complaint alleging the  
29 commission of or notice of the conviction order for any of the  
30 acts described herein. Except for the grounds numbered (8), (9)  
31 and (29), no action shall be commenced more than 5 years after  
32 the date of the incident or act alleged to have violated this  
33 Section, however incidents or acts up to 10 years after the  
34 date of the incident or act alleged may be combined to allege a

1 pattern of practice under item (26) of subsection (A) of this  
2 Section. In the event of the settlement of any claim or cause  
3 of action in favor of the claimant or the reduction to final  
4 judgment of any civil action in favor of the plaintiff, such  
5 claim, cause of action or civil action being grounded on the  
6 allegation that a person licensed under this Act was negligent  
7 in providing care, the Department shall have an additional  
8 period of 2 years ~~one year~~ from the date of notification to the  
9 Department under Section 23 of this Act of such settlement or  
10 final judgment in which to investigate and commence formal  
11 disciplinary proceedings under Section 36 of this Act, except  
12 as otherwise provided by law. The Department shall expunge the  
13 records of any investigation concluded by dismissal or closure  
14 and any discipline solely for administrative matters 3 years  
15 after final disposition or after the statute of limitations has  
16 expired, whichever is greater. The time during which the holder  
17 of the license was outside the State of Illinois shall not be  
18 included within any period of time limiting the commencement of  
19 disciplinary action by the Department.

20 The entry of an order or judgment by any circuit court  
21 establishing that any person holding a license under this Act  
22 is a person in need of mental treatment operates as a  
23 suspension of that license. That person may resume their  
24 practice only upon the entry of a Departmental order based upon  
25 a finding by the Medical Disciplinary Board that they have been  
26 determined to be recovered from mental illness by the court and  
27 upon the Disciplinary Board's recommendation that they be  
28 permitted to resume their practice.

29 The Department may refuse to issue or take disciplinary  
30 action concerning the license of any person who fails to file a  
31 return, or to pay the tax, penalty or interest shown in a filed  
32 return, or to pay any final assessment of tax, penalty or  
33 interest, as required by any tax Act administered by the  
34 Illinois Department of Revenue, until such time as the

1 requirements of any such tax Act are satisfied as determined by  
2 the Illinois Department of Revenue.

3 The Department, upon the recommendation of the  
4 Disciplinary Board, shall adopt rules which set forth standards  
5 to be used in determining:

6 (a) when a person will be deemed sufficiently  
7 rehabilitated to warrant the public trust;

8 (b) what constitutes dishonorable, unethical or  
9 unprofessional conduct of a character likely to deceive,  
10 defraud, or harm the public;

11 (c) what constitutes immoral conduct in the commission  
12 of any act, including, but not limited to, commission of an  
13 act of sexual misconduct related to the licensee's  
14 practice; and

15 (d) what constitutes gross negligence in the practice  
16 of medicine.

17 However, no such rule shall be admissible into evidence in  
18 any civil action except for review of a licensing or other  
19 disciplinary action under this Act.

20 In enforcing this Section, the Medical Disciplinary Board,  
21 upon a showing of a possible violation, may compel any  
22 individual licensed to practice under this Act, or who has  
23 applied for licensure or a permit pursuant to this Act, to  
24 submit to a mental or physical examination, or both, as  
25 required by and at the expense of the Department. The examining  
26 physician or physicians shall be those specifically designated  
27 by the Disciplinary Board. The Medical Disciplinary Board or  
28 the Department may order the examining physician to present  
29 testimony concerning this mental or physical examination of the  
30 licensee or applicant. No information shall be excluded by  
31 reason of any common law or statutory privilege relating to  
32 communication between the licensee or applicant and the  
33 examining physician. The individual to be examined may have, at  
34 his or her own expense, another physician of his or her choice

1 present during all aspects of the examination. Failure of any  
2 individual to submit to mental or physical examination, when  
3 directed, shall be grounds for suspension of his or her license  
4 until such time as the individual submits to the examination if  
5 the Disciplinary Board finds, after notice and hearing, that  
6 the refusal to submit to the examination was without reasonable  
7 cause. If the Disciplinary Board finds a physician unable to  
8 practice because of the reasons set forth in this Section, the  
9 Disciplinary Board shall require such physician to submit to  
10 care, counseling, or treatment by physicians approved or  
11 designated by the Disciplinary Board, as a condition for  
12 continued, reinstated, or renewed licensure to practice. Any  
13 physician, whose license was granted pursuant to Sections 9,  
14 17, or 19 of this Act, or, continued, reinstated, renewed,  
15 disciplined or supervised, subject to such terms, conditions or  
16 restrictions who shall fail to comply with such terms,  
17 conditions or restrictions, or to complete a required program  
18 of care, counseling, or treatment, as determined by the Chief  
19 Medical Coordinator or Deputy Medical Coordinators, shall be  
20 referred to the Director for a determination as to whether the  
21 licensee shall have their license suspended immediately,  
22 pending a hearing by the Disciplinary Board. In instances in  
23 which the Director immediately suspends a license under this  
24 Section, a hearing upon such person's license must be convened  
25 by the Disciplinary Board within 15 days after such suspension  
26 and completed without appreciable delay. The Disciplinary  
27 Board shall have the authority to review the subject  
28 physician's record of treatment and counseling regarding the  
29 impairment, to the extent permitted by applicable federal  
30 statutes and regulations safeguarding the confidentiality of  
31 medical records.

32 An individual licensed under this Act, affected under this  
33 Section, shall be afforded an opportunity to demonstrate to the  
34 Disciplinary Board that they can resume practice in compliance

1 with acceptable and prevailing standards under the provisions  
2 of their license.

3 The Department may promulgate rules for the imposition of  
4 fines in disciplinary cases, not to exceed \$5,000 for each  
5 violation of this Act. Fines may be imposed in conjunction with  
6 other forms of disciplinary action, but shall not be the  
7 exclusive disposition of any disciplinary action arising out of  
8 conduct resulting in death or injury to a patient. Any funds  
9 collected from such fines shall be deposited in the Medical  
10 Disciplinary Fund.

11 (B) The Department shall revoke the license or visiting  
12 permit of any person issued under this Act to practice medicine  
13 or to treat human ailments without the use of drugs and without  
14 operative surgery, who has been convicted a second time of  
15 committing any felony under the Illinois Controlled Substances  
16 Act, or who has been convicted a second time of committing a  
17 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois  
18 Public Aid Code. A person whose license or visiting permit is  
19 revoked under this subsection B of Section 22 of this Act shall  
20 be prohibited from practicing medicine or treating human  
21 ailments without the use of drugs and without operative  
22 surgery.

23 (C) The Medical Disciplinary Board shall recommend to the  
24 Department civil penalties and any other appropriate  
25 discipline in disciplinary cases when the Board finds that a  
26 physician willfully performed an abortion with actual  
27 knowledge that the person upon whom the abortion has been  
28 performed is a minor or an incompetent person without notice as  
29 required under the Parental Notice of Abortion Act of 1995.  
30 Upon the Board's recommendation, the Department shall impose,  
31 for the first violation, a civil penalty of \$1,000 and for a  
32 second or subsequent violation, a civil penalty of \$5,000.

33 (Source: P.A. 89-18, eff. 6-1-95; 89-201, eff. 1-1-96; 89-626,  
34 eff. 8-9-96; 89-702, eff. 7-1-97; 90-742, eff. 8-13-98.)



1 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

3 Sec. 23. Reports relating to professional conduct and  
4 capacity.

5 (A) Entities required to report.

6 (1) Health care institutions. The chief administrator  
7 or executive officer of any health care institution  
8 licensed by the Illinois Department of Public Health shall  
9 report to the Disciplinary Board when any person's clinical  
10 privileges are terminated or are restricted based on a  
11 final determination, in accordance with that institution's  
12 by-laws or rules and regulations, that a person has either  
13 committed an act or acts which may directly threaten  
14 patient care, and not of an administrative nature, or that  
15 a person may be mentally or physically disabled in such a  
16 manner as to endanger patients under that person's care.  
17 Such officer also shall report if a person accepts  
18 voluntary termination or restriction of clinical  
19 privileges in lieu of formal action based upon conduct  
20 related directly to patient care and not of an  
21 administrative nature, or in lieu of formal action seeking  
22 to determine whether a person may be mentally or physically  
23 disabled in such a manner as to endanger patients under  
24 that person's care. The Medical Disciplinary Board shall,  
25 by rule, provide for the reporting to it of all instances  
26 in which a person, licensed under this Act, who is impaired  
27 by reason of age, drug or alcohol abuse or physical or  
28 mental impairment, is under supervision and, where  
29 appropriate, is in a program of rehabilitation. Such  
30 reports shall be strictly confidential and may be reviewed  
31 and considered only by the members of the Disciplinary  
32 Board, or by authorized staff as provided by rules of the  
33 Disciplinary Board. Provisions shall be made for the

1 periodic report of the status of any such person not less  
2 than twice annually in order that the Disciplinary Board  
3 shall have current information upon which to determine the  
4 status of any such person. Such initial and periodic  
5 reports of impaired physicians shall not be considered  
6 records within the meaning of The State Records Act and  
7 shall be disposed of, following a determination by the  
8 Disciplinary Board that such reports are no longer  
9 required, in a manner and at such time as the Disciplinary  
10 Board shall determine by rule. The filing of such reports  
11 shall be construed as the filing of a report for purposes  
12 of subsection (C) of this Section.

13 (2) Professional associations. The President or chief  
14 executive officer of any association or society, of persons  
15 licensed under this Act, operating within this State shall  
16 report to the Disciplinary Board when the association or  
17 society renders a final determination that a person has  
18 committed unprofessional conduct related directly to  
19 patient care or that a person may be mentally or physically  
20 disabled in such a manner as to endanger patients under  
21 that person's care.

22 (3) Professional liability insurers. Every insurance  
23 company which offers policies of professional liability  
24 insurance to persons licensed under this Act, or any other  
25 entity which seeks to indemnify the professional liability  
26 of a person licensed under this Act, shall report to the  
27 Disciplinary Board the settlement of any claim or cause of  
28 action, or final judgment rendered in any cause of action,  
29 which alleged negligence in the furnishing of medical care  
30 by such licensed person when such settlement or final  
31 judgment is in favor of the plaintiff.

32 (4) State's Attorneys. The State's Attorney of each  
33 county shall report to the Disciplinary Board all instances  
34 in which a person licensed under this Act is convicted or

1 otherwise found guilty of the commission of any felony. The  
2 State's Attorney of each county may report to the  
3 Disciplinary Board through a verified complaint any  
4 instance in which the State's Attorney believes that a  
5 physician has willfully violated the notice requirements  
6 of the Parental Notice of Abortion Act of 1995.

7 (5) State agencies. All agencies, boards, commissions,  
8 departments, or other instrumentalities of the government  
9 of the State of Illinois shall report to the Disciplinary  
10 Board any instance arising in connection with the  
11 operations of such agency, including the administration of  
12 any law by such agency, in which a person licensed under  
13 this Act has either committed an act or acts which may be a  
14 violation of this Act or which may constitute  
15 unprofessional conduct related directly to patient care or  
16 which indicates that a person licensed under this Act may  
17 be mentally or physically disabled in such a manner as to  
18 endanger patients under that person's care.

19 (B) Mandatory reporting. All reports required by items  
20 (34), (35), and (36) of subsection (A) of Section 22 and by  
21 Section 23 shall be submitted to the Disciplinary Board in a  
22 timely fashion. The reports shall be filed in writing within 60  
23 days after a determination that a report is required under this  
24 Act. All reports shall contain the following information:

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

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

29 (3) The name or other means of identification of any  
30 patient or patients whose treatment is a subject of the  
31 report, ~~provided, however, no medical records may be~~  
32 ~~revealed without the written consent of the patient or~~  
33 ~~patients.~~

34 (4) A brief description of the facts which gave rise to

1 the issuance of the report, including the dates of any  
2 occurrences deemed to necessitate the filing of the report.

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

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

9 The Department shall have the right to inform patients of  
10 the right to provide written consent for the Department to  
11 obtain copies of hospital and medical records. The Disciplinary  
12 Board or Department may exercise the power under Section 38 of  
13 this Act to subpoena copies of hospital or medical records in  
14 mandatory report cases alleging death or permanent bodily  
15 injury ~~when consent to obtain records is not provided by a~~  
16 ~~patient or legal representative.~~ Appropriate rules shall be  
17 adopted by the Department with the approval of the Disciplinary  
18 Board.

19 When the Department has received written reports  
20 concerning incidents required to be reported in items (34),  
21 (35), and (36) of subsection (A) of Section 22, the licensee's  
22 failure to report the incident to the Department under those  
23 items shall not be the sole grounds for disciplinary action.

24 Nothing contained in this Section shall act to in any way,  
25 waive or modify the confidentiality of medical reports and  
26 committee reports to the extent provided by law. Any  
27 information reported or disclosed shall be kept for the  
28 confidential use of the Disciplinary Board, the Medical  
29 Coordinators, the Disciplinary Board's attorneys, the medical  
30 investigative staff, and authorized clerical staff, as  
31 provided in this Act, and shall be afforded the same status as  
32 is provided information concerning medical studies in Part 21  
33 of Article VIII of the Code of Civil Procedure.

34 (C) Immunity from prosecution. Any individual or

1 organization acting in good faith, and not in a wilful and  
2 wanton manner, in complying with this Act by providing any  
3 report or other information to the Disciplinary Board, or  
4 assisting in the investigation or preparation of such  
5 information, or by participating in proceedings of the  
6 Disciplinary Board, or by serving as a member of the  
7 Disciplinary Board, shall not, as a result of such actions, be  
8 subject to criminal prosecution or civil damages.

9 (D) Indemnification. Members of the Disciplinary Board,  
10 the Medical Coordinators, the Disciplinary Board's attorneys,  
11 the medical investigative staff, physicians retained under  
12 contract to assist and advise the medical coordinators in the  
13 investigation, and authorized clerical staff shall be  
14 indemnified by the State for any actions occurring within the  
15 scope of services on the Disciplinary Board, done in good faith  
16 and not wilful and wanton in nature. The Attorney General shall  
17 defend all such actions unless he or she determines either that  
18 there would be a conflict of interest in such representation or  
19 that the actions complained of were not in good faith or were  
20 wilful and wanton.

21 Should the Attorney General decline representation, the  
22 member shall have the right to employ counsel of his or her  
23 choice, whose fees shall be provided by the State, after  
24 approval by the Attorney General, unless there is a  
25 determination by a court that the member's actions were not in  
26 good faith or were wilful and wanton.

27 The member must notify the Attorney General within 7 days  
28 of receipt of notice of the initiation of any action involving  
29 services of the Disciplinary Board. Failure to so notify the  
30 Attorney General shall constitute an absolute waiver of the  
31 right to a defense and indemnification.

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

1 (E) Deliberations of Disciplinary Board. Upon the receipt  
2 of any report called for by this Act, other than those reports  
3 of impaired persons licensed under this Act required pursuant  
4 to the rules of the Disciplinary Board, the Disciplinary Board  
5 shall notify in writing, by certified mail, the person who is  
6 the subject of the report. Such notification shall be made  
7 within 30 days of receipt by the Disciplinary Board of the  
8 report.

9 The notification shall include a written notice setting  
10 forth the person's right to examine the report. Included in  
11 such notification shall be the address at which the file is  
12 maintained, the name of the custodian of the reports, and the  
13 telephone number at which the custodian may be reached. The  
14 person who is the subject of the report shall submit a written  
15 statement responding, clarifying, adding to, or proposing the  
16 amending of the report previously filed and provide a copy of  
17 the applicable medical records. The statement shall become a  
18 permanent part of the file and must be received by the  
19 Disciplinary Board no more than 60 days after the date on which  
20 the person was notified by the Disciplinary Board of the  
21 existence of the original report.

22 The Disciplinary Board shall review all reports received by  
23 it, together with any supporting information and responding  
24 statements submitted by persons who are the subject of reports.  
25 The review by the Disciplinary Board shall be in a timely  
26 manner but in no event, shall the Disciplinary Board's initial  
27 review of the material contained in each disciplinary file be  
28 less than 61 days nor more than 180 days after the receipt of  
29 the initial report by the Disciplinary Board.

30 When the Disciplinary Board makes its initial review of the  
31 materials contained within its disciplinary files, the  
32 Disciplinary Board shall, in writing, make a determination as  
33 to whether there are sufficient facts to warrant further  
34 investigation or action. Failure to make such determination

1 within the time provided shall be deemed to be a determination  
2 that there are not sufficient facts to warrant further  
3 investigation or action.

4 Should the Disciplinary Board find that there are not  
5 sufficient facts to warrant further investigation, or action,  
6 the report shall be accepted for filing and the matter shall be  
7 deemed closed and so reported to the Director. The Director  
8 shall then have 30 days to accept the Medical Disciplinary  
9 Board's decision or request further investigation. The  
10 Director shall inform the Board in writing of the decision to  
11 request further investigation, including the specific reasons  
12 for the decision. The individual or entity filing the original  
13 report or complaint and the person who is the subject of the  
14 report or complaint shall be notified in writing by the  
15 Director of any final action on their report or complaint.

16 (F) Summary reports. The Disciplinary Board shall prepare,  
17 on a timely basis, but in no event less than one every other  
18 month, a summary report of final actions taken upon  
19 disciplinary files maintained by the Disciplinary Board. The  
20 summary reports shall be sent by the Disciplinary Board to  
21 every health care facility licensed by the Illinois Department  
22 of Public Health, every professional association and society of  
23 persons licensed under this Act functioning on a statewide  
24 basis in this State, the American Medical Association, the  
25 American Osteopathic Association, the American Chiropractic  
26 Association, all insurers providing professional liability  
27 insurance to persons licensed under this Act in the State of  
28 Illinois, the Federation of State Medical Licensing Boards, and  
29 the Illinois Pharmacists Association.

30 (G) Any violation of this Section shall be a Class A  
31 misdemeanor.

32 (H) If any such person violates the provisions of this  
33 Section an action may be brought in the name of the People of  
34 the State of Illinois, through the Attorney General of the

1 State of Illinois, for an order enjoining such violation or for  
2 an order enforcing compliance with this Section. Upon filing of  
3 a verified petition in such court, the court may issue a  
4 temporary restraining order without notice or bond and may  
5 preliminarily or permanently enjoin such violation, and if it  
6 is established that such person has violated or is violating  
7 the injunction, the court may punish the offender for contempt  
8 of court. Proceedings under this paragraph shall be in addition  
9 to, and not in lieu of, all other remedies and penalties  
10 provided for by this Section.

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

13 ARTICLE 5.

14 Section 5-5. The Health Care Arbitration Act is amended by  
15 changing Sections 8 and 9 as follows:

16 (710 ILCS 15/8) (from Ch. 10, par. 208)

17 Sec. 8. Conditions. Every health care arbitration  
18 agreement shall be subject to the following conditions:

19 (a) The agreement is not a condition to the rendering of  
20 health care services by any party and the agreement has been  
21 executed by the recipient of health care services at the  
22 inception of or during the term of provision of services for a  
23 specific cause by either a health care provider or a hospital;  
24 and

25 (b) The agreement is a separate instrument complete in  
26 itself and not a part of any other contract or instrument; and

27 (c) The agreement may not limit, impair, or waive any  
28 substantive rights or defenses of any party, including the  
29 statute of limitations; and

30 (d) The agreement shall not limit, impair, or waive the



1 procedural rights to be heard, to present material evidence, to  
2 cross-examine witnesses, and to be represented by an attorney,  
3 or other procedural rights of due process of any party.

4 ~~(c) As a part of the discharge planning process the patient~~  
5 ~~or, if appropriate, members of his family must be given a copy~~  
6 ~~of the health care arbitration agreement previously executed by~~  
7 ~~or for the patient and shall re-affirm it. Failure to comply~~  
8 ~~with this provision during the discharge planning process shall~~  
9 ~~void the health care arbitration agreement.~~

10 (Source: P.A. 80-1012.)

11 (710 ILCS 15/9) (from Ch. 10, par. 209)

12 Sec. 9. Mandatory Provisions.

13 (a) Every health care arbitration agreement shall be  
14 clearly captioned "Health Care Arbitration Agreement".

15 (b) Every health care arbitration agreement in relation to  
16 health care services rendered during hospitalization shall  
17 specify the date of commencement of hospitalization. Every  
18 health care arbitration agreement in relation to health care  
19 services not rendered during hospitalization shall state the  
20 specific cause for which the services are provided.

21 (c) Every health care arbitration agreement may be  
22 cancelled by any signatory (1) ~~within 60 days of its execution~~  
23 ~~or~~ within 60 days of the date of the patient's discharge from  
24 the hospital, or last date of treatment, whichever is later, as  
25 to an agreement in relation to health care services rendered  
26 during hospitalization, ~~provided, that if executed other than~~  
27 ~~at the time of discharge of the patient from the hospital, the~~  
28 ~~health care arbitration agreement be reaffirmed at the time of~~  
29 ~~the discharge planning process in the same manner as provided~~  
30 ~~for in the execution of the original agreement;~~ or (2) within  
31 60 days of the date of its execution, or the last date of  
32 treatment by the health care provider, whichever is later, as  
33 to an agreement in relation to health care services not

1 rendered during hospitalization. Provided, that no health care  
2 arbitration agreement shall be valid after 10 ~~2~~ years from the  
3 date of its execution. An employee of a hospital or health care  
4 provider who is not a signatory to an agreement may cancel such  
5 agreement as to himself until 30 days following his  
6 notification that he is a party to a dispute or issue on which  
7 arbitration has been demanded pursuant to such agreement. If  
8 any person executing a health care arbitration agreement dies  
9 before the period of cancellation as outlined above, the  
10 personal representative of the decedent shall have the right to  
11 cancel the health care arbitration agreement within 60 days of  
12 the date of his appointment as the legal representative of the  
13 decedent's estate. ~~Provided, that if no legal representative is~~  
14 ~~appointed within 6 months of the death of said decedent the~~  
15 ~~next of kin of such decedent shall have the right to cancel the~~  
16 ~~health care arbitration agreement within 8 months from the date~~  
17 ~~of death.~~

18 (d) Every health care arbitration agreement shall contain  
19 immediately above the signature lines, in upper case type in  
20 printed letters of at least 3/16 inch height, a caption and  
21 paragraphs as follows:

22 "AGREEMENT TO ARBITRATE HEALTH CARE

23 NEGLIGENCE CLAIMS

24 NOTICE TO PATIENT

25 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO  
26 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO  
27 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO  
28 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM  
29 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE  
30 REPLACED BY AN ARBITRATION PROCEDURE.

31 THIS AGREEMENT MAY BE CANCELLED WITHIN 60 DAYS ~~OF SIGNING~~  
32 ~~OR 60 DAYS~~ AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS AFTER  
33 YOUR LAST HEALTH CARE SERVICE ~~MEDICAL TREATMENT~~ IN RELATION  
34 TO HEALTH CARE SERVICES NOT RENDERED DURING

1 HOSPITALIZATION.

2 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT  
3 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF  
4 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS  
5 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE  
6 DECISION OF THE ARBITRATION PANEL."

7 (e) an executed copy of the AGREEMENT TO ARBITRATE HEALTH  
8 CARE CLAIMS ~~and any reaffirmation of that agreement as required~~  
9 ~~by this Act~~ shall be given to the patient during the time of  
10 the discharge planning process or at the time of discharge  
11 after last date of treatment.

12 (Source: P.A. 91-156, eff. 1-1-00.)

13 Section 5-10. The Code of Civil Procedure is amended by  
14 changing Sections 2-622, 2-1107.1, 2-1109, 2-1702, 2-1704,  
15 8-1901, and 8-2501, and by adding Sections 2-1105.01 and 8-2502  
16 as follows:

17 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

18 (Text of Section WITHOUT the changes made by P.A. 89-7,  
19 which has been held unconstitutional)

20 Sec. 2-622. Healing art malpractice.

21 (a) In any action, whether in tort, contract or otherwise,  
22 in which the plaintiff seeks damages for injuries or death by  
23 reason of medical, hospital, or other healing art malpractice,  
24 the plaintiff's attorney or the plaintiff, if the plaintiff is  
25 proceeding pro se, shall file an affidavit, attached to the  
26 original and all copies of the complaint, declaring one of the  
27 following:

28 1. That the affiant has consulted and reviewed the  
29 facts of the case with a health professional who the  
30 affiant reasonably believes: (i) is knowledgeable in the  
31 relevant issues involved in the particular action; (ii)  
32 practices or has practiced within the last 6 years or

1 teaches or has taught within the last 6 years in the same  
2 area of health care or medicine that is at issue in the  
3 particular action; ~~and~~ (iii) meets the minimum  
4 requirements set forth in 8-2501; and (iv) is qualified by  
5 experience or demonstrated competence in the subject of the  
6 case; that the reviewing health professional has  
7 determined in a written report, after a review of the  
8 medical record and other relevant material involved in the  
9 particular action that there is a reasonable and  
10 meritorious cause for the filing of such action; and that  
11 the affiant has concluded on the basis of the reviewing  
12 health professional's review and consultation that there  
13 is a reasonable and meritorious cause for filing of such  
14 action. If the affidavit is filed as to a defendant who is  
15 a physician licensed to treat human ailments without the  
16 use of drugs or medicines and without operative surgery, a  
17 dentist, a podiatrist, a psychologist, or a naprapath, the  
18 written report must be from a health professional licensed  
19 in the same profession, with the same class of license, as  
20 the defendant. For affidavits filed as to all other  
21 defendants, the written report must be from a physician  
22 licensed to practice medicine in all its branches. In  
23 either event, the affidavit must identify the profession of  
24 the reviewing health professional. A copy of the written  
25 report, clearly identifying the plaintiff and the reasons  
26 for the reviewing health professional's determination that  
27 a reasonable and meritorious cause for the filing of the  
28 action exists, must be attached to the affidavit, ~~but~~  
29 ~~information which would identify the reviewing health~~  
30 ~~professional may be deleted from the copy so attached.~~ The  
31 report shall include the name and address of the reviewing  
32 health professional and documentation of compliance with  
33 requirements set forth in 8-2501.

34 2. That the affiant was unable to obtain a consultation

1 required by paragraph 1 because a statute of limitations  
2 would impair the action and the consultation required could  
3 not be obtained before the expiration of the statute of  
4 limitations. If an affidavit is executed pursuant to this  
5 paragraph, the certificate and written report required by  
6 paragraph 1 shall be filed within 90 days after the filing  
7 of the complaint. No additional 90 day extensions shall be  
8 granted. The defendant shall be excused from answering or  
9 otherwise pleading until 30 days after being served with a  
10 certificate required by paragraph 1.

11 3. That a request has been made by the plaintiff or his  
12 attorney for examination and copying of records pursuant to  
13 Part 20 of Article VIII of this Code and the party required  
14 to comply under those Sections has failed to produce such  
15 records within 60 days of the receipt of the request. If an  
16 affidavit is executed pursuant to this paragraph, the  
17 certificate and written report required by paragraph 1  
18 shall be filed within 90 days following receipt of the  
19 requested records. All defendants except those whose  
20 failure to comply with Part 20 of Article VIII of this Code  
21 is the basis for an affidavit under this paragraph shall be  
22 excused from answering or otherwise pleading until 30 days  
23 after being served with the certificate required by  
24 paragraph 1.

25 (b) Where a certificate and written report are required  
26 pursuant to this Section a separate certificate and written  
27 report shall be filed as to each defendant who has been named  
28 in the complaint and shall be filed as to each defendant named  
29 at a later time.

30 (c) Where the plaintiff intends to rely on the doctrine of  
31 "res ipsa loquitur", as defined by Section 2-1113 of this Code,  
32 the certificate and written report must state that, in the  
33 opinion of the reviewing health professional, negligence has  
34 occurred in the course of medical treatment. The affiant shall

1 certify upon filing of the complaint that he is relying on the  
2 doctrine of "res ipsa loquitur".

3 (d) When the attorney intends to rely on the doctrine of  
4 failure to inform of the consequences of the procedure, the  
5 attorney shall certify upon the filing of the complaint that  
6 the reviewing health professional has, after reviewing the  
7 medical record and other relevant materials involved in the  
8 particular action, concluded that a reasonable health  
9 professional would have informed the patient of the  
10 consequences of the procedure.

11 (e) Allegations and denials in the affidavit, made without  
12 reasonable cause and found to be untrue, shall subject the  
13 party pleading them or his attorney, or both, to the payment of  
14 reasonable expenses, actually incurred by the other party by  
15 reason of the untrue pleading, together with reasonable  
16 attorneys' fees to be summarily taxed by the court upon motion  
17 made within 30 days of the judgment or dismissal. In no event  
18 shall the award for attorneys' fees and expenses exceed those  
19 actually paid by the moving party, including the insurer, if  
20 any. In proceedings under this paragraph (e), the moving party  
21 shall have the right to depose and examine any and all  
22 reviewing health professionals who prepared reports used in  
23 conjunction with an affidavit required by this Section.

24 (f) A reviewing health professional who in good faith  
25 prepares a report used in conjunction with an affidavit  
26 required by this Section shall have civil immunity from  
27 liability which otherwise might result from the preparation of  
28 such report.

29 (g) The failure to file a certificate required by this  
30 Section shall be grounds for dismissal under Section 2-619.

31 (h) This Section does not apply to or affect any actions  
32 pending at the time of its effective date, but applies to cases  
33 filed on or after its effective date.

34 (i) This amendatory Act of 1997 does not apply to or affect

1 any actions pending at the time of its effective date, but  
2 applies to cases filed on or after its effective date.

3 (j) This amendatory Act of 93rd General Assembly does not  
4 apply to or affect any actions pending at the time of its  
5 effective date, but applies to cases filed on or after its  
6 effective date.

7 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

8 (735 ILCS 5/2-1105.01 new)

9 Sec. 2-1105.01. Personal assets protected in healing art  
10 malpractice cases. In all cases, whether tort, contract, or  
11 otherwise, in which the plaintiff seeks damages by reason of  
12 medical healing art malpractice, the amount of the recovery  
13 shall be limited to an amount that is covered by the  
14 physician's medical malpractice insurance or liability  
15 insurance provided the physician maintains at least a minimum  
16 of \$1,000,000 in insurance coverage per occurrence and  
17 \$3,000,000 in the aggregate. Corporate assets are subject to  
18 attachment for satisfaction of a judgment. In no event, shall a  
19 physician be liable in an amount that would cause him or her to  
20 forfeit any of his or her personal assets.

21 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

22 (Text of Section WITHOUT the changes made by P.A. 89-7,  
23 which has been held unconstitutional)

24 Sec. 2-1107.1. Jury instruction in tort actions. In all  
25 actions on account of bodily injury or death or physical damage  
26 to property based on negligence, or product liability based on  
27 strict tort liability, the court shall instruct the jury in  
28 writing, to the extent that it is true, that any award of  
29 compensatory damages will not be taxable under federal or State  
30 income tax law and that the defendant shall be found not liable  
31 if the jury finds that the contributory fault of the plaintiff  
32 is more than 50% of the proximate cause of the injury or damage

1 for which recovery is sought.

2 This amendatory Act of the 93rd General Assembly applies to  
3 causes of action filed on or after its effective date.

4 (Source: P.A. 84-1431.)

5 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

6 (Text of Section WITHOUT the changes made by P.A. 89-7,  
7 which has been held unconstitutional)

8 Sec. 2-1109. Itemized verdicts.

9 (a) In every case where damages for bodily injury or death  
10 ~~to the person~~ are assessed by the jury the verdict shall be  
11 itemized so as to reflect the monetary distribution, if any,  
12 among economic loss and non-economic loss, ~~if any,~~ and, in  
13 healing art ~~medical~~ malpractice cases, further itemized so as  
14 to reflect the distribution of economic loss by category, such  
15 itemization of economic loss by category to include: (a)  
16 amounts intended to compensate for reasonable expenses which  
17 have been incurred, or which will be incurred, for necessary  
18 medical, surgical, x-ray, dental, or other health or  
19 rehabilitative services, drugs, and therapy; (b) amounts  
20 intended to compensate for lost wages or loss of earning  
21 capacity; and (c) all other economic losses claimed by the  
22 plaintiff or granted by the jury. Each category of economic  
23 loss shall be further itemized into amounts intended to  
24 compensate for losses which have been incurred prior to the  
25 verdict and amounts intended to compensate for future losses  
26 ~~which will be incurred in the future.~~

27 (b) In all actions on account of bodily injury or death  
28 based on negligence, including healing art malpractice  
29 actions, the following terms have the following meanings:

30 (i) "Economic loss" or "economic damages" means all  
31 damages that are tangible, such as damages for past and  
32 future medical expenses, loss of income or earnings and  
33 other property loss.



1           (ii) "Non-economic loss" or "non-economic damages"  
2           means damages that are intangible, including but not  
3           limited to damages for pain and suffering, disability,  
4           disfigurement, loss of consortium, and loss of society.

5           (iii) "Compensatory damages" or "actual damages" are  
6           the sum of economic and non-economic damages.

7           (c) Nothing in this Section shall be construed to create a  
8           cause of action.

9           (d) This amendatory Act of the 93rd General Assembly  
10           applies to causes of action filed on or after its effective  
11           date.

12           (Source: P.A. 84-7.)

13           (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

14           (Text of Section WITHOUT the changes made by P.A. 89-7,  
15           which has been held unconstitutional)

16           Sec. 2-1702. Economic/Non-Economic Loss. As used in this  
17           Part, "economic loss" and "non-economic loss" have the same  
18           meanings as in Section 2-1109(b).†

19           ~~(a) "Economic loss" means all pecuniary harm for which~~  
20           ~~damages are recoverable.~~

21           ~~(b) "Non-economic loss" means loss of consortium and all~~  
22           ~~nonpecuniary harm for which damages are recoverable,~~  
23           ~~including, without limitation, damages for pain and suffering,~~  
24           ~~inconvenience, disfigurement, and physical impairment.~~

25           (Source: P.A. 84-7.)

26           (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

27           Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~  
28           ~~Action~~. As used in this Code Part, "healing art ~~medical~~  
29           malpractice action" means any action, whether in tort, contract  
30           or otherwise, in which the plaintiff seeks damages for injuries  
31           or death by reason of medical, hospital, or other healing art  
32           malpractice including but not limited to medical, nursing,

1 dental, or podiatric malpractice. The term "healing art" shall  
2 not include care and treatment by spiritual means through  
3 prayer in accord with the tenets and practices of a recognized  
4 church or religious denomination.

5 (Source: P.A. 84-7.)

6 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

7 Sec. 8-1901. Admission of liability - Effect.

8 (a) The providing of, or payment for, medical, surgical,  
9 hospital, or rehabilitation services, facilities, or equipment  
10 by or on behalf of any person, or the offer to provide, or pay  
11 for, any one or more of the foregoing, shall not be construed  
12 as an admission of any liability by such person or persons.  
13 Testimony, writings, records, reports or information with  
14 respect to the foregoing shall not be admissible in evidence as  
15 an admission of any liability in any action of any kind in any  
16 court or before any commission, administrative agency, or other  
17 tribunal in this State, except at the instance of the person or  
18 persons so making any such provision, payment or offer.

19 (b) Any expression of grief, apology, remedial action, or  
20 explanation provided by a health care provider, including, but  
21 not limited to, a statement that the health care provider is  
22 "sorry" for the outcome to a patient, the patient's family, or  
23 the patient's legal representative about an inadequate or  
24 unanticipated treatment or care outcome that is provided within  
25 72 hours of when the provider knew or should have known of the  
26 potential cause of such outcome shall not be admissible as  
27 evidence, nor discoverable in any action of any kind in any  
28 court or before any tribunal, board, agency, or person. The  
29 disclosure of any such information, whether proper, or  
30 improper, shall not waive or have any effect upon its  
31 confidentiality, nondiscoverability, or inadmissibility. As  
32 used in this Section, a "health care provider" is any hospital,  
33 nursing home or other facility, or employee or agent thereof, a

1 physician, or other licensed health care professional. Nothing  
2 in this Section precludes the discovery or admissibility of any  
3 other facts regarding the patient's treatment or outcome as  
4 otherwise permitted by law.

5 (Source: P.A. 82-280.)

6 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,  
8 which has been held unconstitutional)

9 Sec. 8-2501. Expert Witness Standards. In any case in which  
10 the standard of care applicable to ~~given by~~ a medical  
11 professional ~~profession~~ is at issue, the court shall apply the  
12 following standards to determine if a witness qualifies as an  
13 expert witness and can testify on the issue of the appropriate  
14 standard of care.

15 (a) Whether the witness is board certified or board  
16 eligible in the same medical specialties as the defendant and  
17 is familiar with the same ~~Relationship of the medical~~  
18 ~~specialties of the witness to the~~ medical problem or problems,  
19 or ~~and~~ the type of treatment administered in the case;

20 (b) Whether the witness has devoted 75% ~~a substantial~~  
21 ~~portion~~ of his or her working hours ~~time~~ to the practice of  
22 medicine, teaching or University based research in relation to  
23 the medical care and type of treatment at issue which gave rise  
24 to the medical problem of which the plaintiff complains;

25 (c) whether the witness is licensed by a state or the  
26 District of Columbia in the same profession as the defendant;  
27 and

28 (d) whether, in the case against a nonspecialist, the  
29 witness can demonstrate a sufficient familiarity with the  
30 standard of care practiced in this State.

31 An expert shall provide proof of active practice, teaching,  
32 or engaging in university-based research. If retired, an expert  
33 must provide proof of attendance and completion of continuing

1 education courses for 3 years previous to giving testimony. An  
2 expert who has not actively practiced, taught, or been engaged  
3 in university-based research for 10 years may not be qualified  
4 as an expert witness.

5 This amendatory Act of the 93rd General Assembly applies to  
6 causes of action filed on or after its effective date.

7 (Source: P.A. 84-7.)

8 (735 ILCS 5/8-2502 new)

9 Sec. 8-2502. Settlement annuity evidence. Any party in a  
10 medical malpractice action may introduce structured settlement  
11 annuity evidence to pay for any future damages that may be  
12 awarded to the plaintiff provided that the following conditions  
13 are satisfied:

14 (a) the witness providing the evidence has specialized  
15 in purchasing structured settlement annuities for at least  
16 5 years and has the ability to obtain price quotes from at  
17 least 3 companies offering structured settlement  
18 annuities; and

19 (b) the structured settlement annuity price quotes are  
20 from companies that have at least a "A+" rating from A.M.  
21 Best and "AA" rating from another rating agency.

22 Any defendant who introduces structured annuity testimony,  
23 must cooperate with the plaintiff in purchasing a structured  
24 settlement annuity to cover any awarded future damages.

25 ARTICLE 10.

26 Section 10-5. The Illinois Insurance Code is amended by  
27 changing Section 155.19 and by adding Section 155.18a as  
28 follows:

29 (215 ILCS 5/155.18a new)

30 Sec. 155.18a. Professional Liability Insurance Resource

1 Center.

2 (a) The Director of Insurance shall establish a  
3 Professional Liability Insurance Resource Center on the World  
4 Wide Web containing the following information:

5 (1) Names, address, and telephone numbers of all  
6 licensed companies providing professional liability  
7 insurance for health care professionals and health care  
8 providers including but not limited to hospitals, nursing  
9 homes, physicians, and dentists. Computer links to company  
10 websites shall be included, if available.

11 (2) Names, addresses and telephone numbers of all  
12 licensed brokers who provide access to professional  
13 liability insurance for health care professionals and  
14 health care providers including but not limited to  
15 hospitals, nursing homes, physicians, and dentists.  
16 Computer links to company websites shall be included, if  
17 available.

18 (b) The Department of Insurance shall conduct and publish  
19 an annual study of the impact of this amendatory Act of the  
20 93rd General Assembly by county on the following:

21 (1) The number of medical malpractice claims filed and  
22 amounts recovered per claim.

23 (2) The amounts of economic and non-economic damages  
24 awarded per case.

25 (3) The amount of plaintiff and defense attorney fees  
26 paid per case.

27 (4) The impact of the provisions of this amendatory Act  
28 of the 93rd General Assembly on the cost and availability  
29 of healing art malpractice coverage for hospitals and  
30 physicians.

31 (5) Every 2 years the Director of Insurance shall make  
32 recommendations to the Governor, the Speaker of the House,  
33 and the President of the Senate on changes in the law  
34 necessary to maintain affordable and accessible

1           professional liability insurance.

2           (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

3           Sec. 155.19. Report of medical liability claims.

4           (a) All claims filed after December 31, 1976 with any  
5 insurer and all suits filed after December 31, 1976 in any  
6 court in this State, alleging liability on the part of any  
7 physician, hospital or other health care provider for medically  
8 related injuries, shall be reported to the Director of  
9 Insurance in such form and under such terms and conditions as  
10 may be prescribed by the Director. The Director shall maintain  
11 complete and accurate records of all such claims and suits  
12 including their nature, amount, disposition and other  
13 information as he may deem useful or desirable in observing and  
14 reporting on health care provider liability trends in this  
15 State. The Director shall release to appropriate disciplinary  
16 and licensing agencies any such data or information which may  
17 assist such agencies in improving the quality of health care or  
18 which may be useful to such agencies for the purpose of  
19 professional discipline.

20           (b) All judgments and settlements filed with the clerks of  
21 the circuit court shall be reported to the Director at least  
22 monthly in such form and under such terms and conditions as may  
23 be prescribed by the Department by Rule. At minimum, the  
24 information reported to the Director under this Section shall  
25 include:

26                   (1) the defendant or defendants;

27                   (2) the plaintiff or plaintiffs;

28                   (3) the defense attorney's name and address and  
29 associated law firm;

30                   (4) the plaintiff attorney's name and address and  
31 associated law firm;

32                   (5) the docket number;

33                   (6) the verdict or judgment award including:

1           (i) economic damages, future medical expenses,  
2           lost wages, and other economic expenses; and

3           (ii) non-economic damages award;

4           (7) remittitur amounts;

5           (8) defense attorney's fees; and

6           (9) plaintiff's attorney's fees, including any request  
7           for additional fees over the amount allowed in Section  
8           2-1114 of the Code of Civil Procedure.

9           The identity of any plaintiff, defendant, attorneys, or  
10          insurance company shall not be disclosed by the Department.

11          (c) With due regard for appropriate maintenance of the  
12          confidentiality thereof, the Director may release from time to  
13          time to the Governor, the General Assembly and the general  
14          public statistical reports based on such data and information.

15          (d) The Director may promulgate such rules and regulations  
16          as may be necessary to carry out the provisions of this  
17          Section.

18          (Source: P.A. 79-1434.)

19          Section 10-10. The Illinois Court Statistics Act is changed  
20          by adding Section 5 as follows:

21                 (705 ILCS 125/5 new)

22                 Sec. 5. Medical liability reporting. The Clerks of all  
23                 courts shall report at least monthly all healing art or medical  
24                 malpractice judgements and settlements filed with the court to  
25                 the Director of the Department of Insurance on forms or in a  
26                 format the Department prescribes by rule. The minimum  
27                 information to be reported shall include the following:

28                         (1) the defendant or defendants;

29                         (2) the plaintiff or plaintiffs;

30                         (3) the defense attorney's name and address and  
31                         associated law firm;

32                         (4) the plaintiff attorney's name and address and

1 associated law firm;

2 (5) the docket number;

3 (6) the verdict or judgment award including:

4 (i) economic damages, future medical expenses,  
5 lost wages, and other economic expenses; and

6 (ii) non-economic damages award;

7 (7) remittitur amounts;

8 (8) defense attorney's fees; and

9 (9) plaintiff's attorney's fees, including any request  
10 for additional fees over the amount allowed in Section  
11 2-1114 of the Code of Civil Procedure.

12 ARTICLE 90.

13 Section 90-90. Severability. If any provision of this Act  
14 or its application to any person or circumstance is held  
15 invalid, the invalidity of that provision or application does  
16 not affect other provisions or applications of this Act that  
17 can be given effect without the invalid provision or  
18 application.

19 ARTICLE 99.

20 Section 99-99. Effective date. This Act takes effect upon  
21 becoming law.".