

94TH GENERAL ASSEMBLY**State of Illinois****2005 and 2006****HB0705**

Introduced 02/01/05, by Rep. Tom Cross - Dan Reitz - Daniel V. Beiser - Thomas Holbrook - Elizabeth Coulson, et al.

SYNOPSIS AS INTRODUCED:

See Index

Makes legislative findings. Amends the Open Meetings Act, Counties Code, and the Illinois Insurance Code. Provides for creation of risk retention trusts for the pooling of risks to provide professional liability coverage for its physicians and health care professionals providing medical care and related health care. Authorizes a county board to incur indebtedness to ensure the availability of and improve hospital, medical, and health services. Amends the Regulatory Sunset Act to extend the repeal of the Medical Practice Act of 1987 to 2016. Amends the Illinois Insurance Code. Makes numerous changes concerning medical liability insurance rates and regulation. Requires the Secretary of Financial and Professional Regulation to establish a Professional Liability Insurance Resource Center on the World Wide Web, and amends the Clerks of Courts Act to require court clerks to provide certain relevant information. Amends the Medical Practice Act of 1987. Makes changes concerning medical coordinators, investigators, discipline, disciplinary proceedings, records, disclosure of information, incidents to which the Act applies, and immunity. Amends the Health Care Arbitration Act by making changes concerning distribution, validity, and cancellation of a health care arbitration agreement and making various other changes. Amends the Code of Civil Procedure by: making changes concerning extension of the period for naming a respondent in discovery as a defendant, jury instructions in healing art malpractice actions, the affidavit and report based on the determination of a reviewing health professional, the amount of the recovery in healing art malpractice actions; limiting liability of a hospital for the medical care provided by a non-employee member of the hospital's medical staff; contingent fees in medical malpractice actions and standards for damages; providing that a statement that a health care provider is "sorry" for an outcome is not admissible as evidence under specified circumstances; changing and adding provisions concerning expert witness standards and guaranteed payment of future medical expenses; and making other changes. Repeals numerous provisions of the Code of Civil Procedure concerning medical malpractice actions. Amends the Illinois Good Samaritan Act. Expands the immunity for civil damages provided for services performed (i) without compensation at, or upon referral from, free medical clinics and (ii) by retired physicians pursuant to an emergency department on call list. Makes other changes. Creates the Sorry Works! Pilot Program Act under which participating hospitals and physicians shall promptly acknowledge and apologize for mistakes in patient care and promptly offer fair settlements. Creates a committee to develop, oversee, and implement the program and specifies the committee's membership. Creates the Sorry Works! Fund as a special fund in the State treasury and amends the State Finance Act to include the Sorry Works! Fund as a special fund. Contains provisions concerning applicability and construction. Effective immediately.

LRB094 06515 AMC 36603 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning medical liability.

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

4 ARTICLE 1

5 Section 101. Findings. The General Assembly finds as
6 follows:

7 (1) The increasing cost of medical liability insurance
8 results in increased financial burdens on physicians and
9 hospitals.

10 (2) The increasing cost of medical liability insurance
11 in Illinois is believed to have contributed to the
12 reduction of the availability of medical care in portions
13 of the State and is believed to have discouraged some
14 medical students from choosing Illinois as the place they
15 will receive their medical education and practice
16 medicine.

17 (3) The public would benefit from making the services
18 of hospitals and physicians more available.

19 (4) This health care crisis, which endangers the public
20 health, safety, and welfare of the citizens of Illinois,
21 requires significant reforms to the civil justice system
22 currently endangering health care for citizens of
23 Illinois. Limiting non-economic damages is one of these
24 significant reforms designed to benefit the people of the
25 State of Illinois. An increasing number of citizens or
26 municipalities are enacting ordinances that limit damages
27 and help maintain the health care delivery system in
28 Illinois and protect the health, safety, and welfare of the
29 people of Illinois.

30 (5) In order to preserve the public health, safety, and
31 welfare of the people of Illinois, the current medical
32 malpractice situation requires reforms that enhance the

1 State's oversight of physicians and ability to discipline
2 physicians, that increase the State's oversight of medical
3 liability insurance carriers, that reduce the number of
4 nonmeritorious healing art malpractice actions, that limit
5 non-economic damages in healing art malpractice actions,
6 that encourage physicians to provide voluntary services at
7 free medical clinics, and that encourage physicians and
8 hospitals to continue providing health care services in
9 Illinois.

10 ARTICLE 2

11 Section 201. Short title. This Article 2 may be cited as
12 the Sorry Works! Pilot Program Act, and references in this
13 Article to "this Act" mean this Article.

14 Section 205. Sorry Works! pilot program. The Sorry Works!
15 pilot program is established. During the first year of the
16 program's operation, participation in the program shall be open
17 to one hospital. Hospitals may participate only with the
18 approval of the hospital administration and the hospital's
19 organized medical staff. During the second year of the
20 program's operation, participation in the program shall be open
21 to one additional hospital.

22 The first participating hospital selected by the committee
23 established under Section 210 shall be located in a county with
24 a population greater than 200,000 that is contiguous with the
25 Mississippi River.

26 Under the program, participating hospitals and physicians
27 shall promptly acknowledge and apologize for mistakes in
28 patient care and promptly offer fair settlements.
29 Participating hospitals shall encourage patients and families
30 to retain their own legal counsel to ensure that their rights
31 are protected and to help facilitate negotiations for fair
32 settlements. Participating hospitals shall report to the
33 committee their total costs for healing art malpractice

1 verdicts, settlements, and defense litigation for the
2 preceding 5 years to enable the committee to determine average
3 costs for that hospital during that period. The committee shall
4 develop standards and protocols to compare costs for cases
5 handled by traditional means and cases handled under the Sorry
6 Works! protocol.

7 If the committee determines that the total costs of cases
8 handled under the Sorry Works! protocol by a hospital
9 participating in the program exceed the total costs that would
10 have been incurred if the cases had been handled by traditional
11 means, the hospital may apply for a grant from the Sorry Works!
12 Fund, a special fund that is created in the State Treasury, for
13 an amount, as determined by the committee, by which the total
14 costs exceed the total costs that would have been incurred if
15 the cases had been handled by traditional means; however, the
16 total of all grants from the Fund for cases in any single
17 participating hospital in any year may not exceed the amount in
18 the Fund or \$2,000,000, whichever is less. All grants shall be
19 subject to appropriation. Moneys in the Fund shall consist of
20 funds transferred into the Fund or otherwise made available
21 from any source.

22 Section 210. Establishment of committee.

23 (a) A committee is established to develop, oversee, and
24 implement the Sorry Works! pilot program. The committee shall
25 have 10 members, each of whom shall be a voting member. Six
26 members of the committee shall constitute a quorum. The
27 committee shall be comprised as follows:

28 (1) The President of the Senate, the Minority Leader of
29 the Senate, the Speaker of the House of Representatives,
30 and the Minority Leader of the House of Representatives
31 shall each appoint 2 members.

32 (2) The Director of the Division of Professional
33 Regulation or his or her designee.

34 (3) The Director of the Division of Insurance or his or
35 her designee.

1 (b) The committee shall establish criteria for the program,
2 including but not limited to: selection of hospitals,
3 physicians, and insurers to participate in the program; and
4 creation of a subcommittee to review cases from hospitals and
5 determine whether hospitals, physicians, and insurers are
6 entitled to compensation under the program.

7 (c) The committee shall communicate with hospitals,
8 physicians, and insurers that are interested in participating
9 in the program. The committee shall make final decisions as to
10 which applicants are accepted for the program.

11 (d) The committee shall report to the Governor and the
12 General Assembly annually.

13 (e) The committee shall publish data regarding the program.

14 (f) Committee members shall receive no compensation for the
15 performance of their duties as members, but each member shall
16 be paid necessary expenses while engaged in the performance of
17 those duties.

18 Section 215. Termination of program.

19 (a) The program may be terminated at any time if the
20 committee, by a vote of two-thirds of its members, votes to
21 terminate the program.

22 (b) If the program is not terminated under subsection (a),
23 the program shall terminate after its second year of operation.

24 Section 270. Findings and purpose. The following are the
25 findings and purposes related to (i) the changes made to the
26 Open Meetings Act and the Counties Code by this amendatory Act
27 of the 94th General Assembly and (ii) Article XLV of the
28 Illinois Insurance Code added by this amendatory Act of the
29 94th General Assembly:

30 (1) In order to provide an alternative to the private
31 insurance market to cover medical liability risks, it is
32 the finding of the General Assembly that counties in the
33 State may find it necessary to seek to protect the public
34 health, safety, and welfare by providing an alternative

1 source of insurance or self-insurance for physicians
2 practicing medicine and their personnel within that
3 county, and that providing such an alternative source is in
4 the public interest and serves a public purpose.

5 (2) A program to provide a stable and ongoing source of
6 professional liability coverage for physicians and their
7 personnel through an insurance or self-insurance trust,
8 under the direction and control of a county or counties,
9 will operate for the protection of the public health,
10 safety, and welfare and serve a paramount public interest
11 and purpose of the county or counties.

12 Section 275. The Open Meetings Act is amended by changing
13 Section 2 as follows:

14 (5 ILCS 120/2) (from Ch. 102, par. 42)

15 Sec. 2. Open meetings.

16 (a) Openness required. All meetings of public bodies shall
17 be open to the public unless excepted in subsection (c) and
18 closed in accordance with Section 2a.

19 (b) Construction of exceptions. The exceptions contained
20 in subsection (c) are in derogation of the requirement that
21 public bodies meet in the open, and therefore, the exceptions
22 are to be strictly construed, extending only to subjects
23 clearly within their scope. The exceptions authorize but do not
24 require the holding of a closed meeting to discuss a subject
25 included within an enumerated exception.

26 (c) Exceptions. A public body may hold closed meetings to
27 consider the following subjects:

28 (1) The appointment, employment, compensation,
29 discipline, performance, or dismissal of specific
30 employees of the public body or legal counsel for the
31 public body, including hearing testimony on a complaint
32 lodged against an employee of the public body or against
33 legal counsel for the public body to determine its
34 validity.

1 (2) Collective negotiating matters between the public
2 body and its employees or their representatives, or
3 deliberations concerning salary schedules for one or more
4 classes of employees.

5 (3) The selection of a person to fill a public office,
6 as defined in this Act, including a vacancy in a public
7 office, when the public body is given power to appoint
8 under law or ordinance, or the discipline, performance or
9 removal of the occupant of a public office, when the public
10 body is given power to remove the occupant under law or
11 ordinance.

12 (4) Evidence or testimony presented in open hearing, or
13 in closed hearing where specifically authorized by law, to
14 a quasi-adjudicative body, as defined in this Act, provided
15 that the body prepares and makes available for public
16 inspection a written decision setting forth its
17 determinative reasoning.

18 (5) The purchase or lease of real property for the use
19 of the public body, including meetings held for the purpose
20 of discussing whether a particular parcel should be
21 acquired.

22 (6) The setting of a price for sale or lease of
23 property owned by the public body.

24 (7) The sale or purchase of securities, investments, or
25 investment contracts.

26 (8) Security procedures and the use of personnel and
27 equipment to respond to an actual, a threatened, or a
28 reasonably potential danger to the safety of employees,
29 students, staff, the public, or public property.

30 (9) Student disciplinary cases.

31 (10) The placement of individual students in special
32 education programs and other matters relating to
33 individual students.

34 (11) Litigation, when an action against, affecting or
35 on behalf of the particular public body has been filed and
36 is pending before a court or administrative tribunal, or

1 when the public body finds that an action is probable or
2 imminent, in which case the basis for the finding shall be
3 recorded and entered into the minutes of the closed
4 meeting.

5 (12) The establishment of reserves or settlement of
6 claims as provided in the Local Governmental and
7 Governmental Employees Tort Immunity Act, if otherwise the
8 disposition of a claim or potential claim might be
9 prejudiced, or the review or discussion of claims, loss or
10 risk management information, records, data, advice or
11 communications from or with respect to any insurer of the
12 public body or any intergovernmental risk management
13 association or self insurance pool of which the public body
14 is a member.

15 (13) Conciliation of complaints of discrimination in
16 the sale or rental of housing, when closed meetings are
17 authorized by the law or ordinance prescribing fair housing
18 practices and creating a commission or administrative
19 agency for their enforcement.

20 (14) Informant sources, the hiring or assignment of
21 undercover personnel or equipment, or ongoing, prior or
22 future criminal investigations, when discussed by a public
23 body with criminal investigatory responsibilities.

24 (15) Professional ethics or performance when
25 considered by an advisory body appointed to advise a
26 licensing or regulatory agency on matters germane to the
27 advisory body's field of competence.

28 (16) Self evaluation, practices and procedures or
29 professional ethics, when meeting with a representative of
30 a statewide association of which the public body is a
31 member.

32 (17) The recruitment, credentialing, discipline or
33 formal peer review of physicians or other health care
34 professionals for a hospital, or other institution
35 providing medical care, that is operated by the public
36 body.

1 (18) Deliberations for decisions of the Prisoner
2 Review Board.

3 (19) Review or discussion of applications received
4 under the Experimental Organ Transplantation Procedures
5 Act.

6 (20) The classification and discussion of matters
7 classified as confidential or continued confidential by
8 the State Employees Suggestion Award Board.

9 (21) Discussion of minutes of meetings lawfully closed
10 under this Act, whether for purposes of approval by the
11 body of the minutes or semi-annual review of the minutes as
12 mandated by Section 2.06.

13 (22) Deliberations for decisions of the State
14 Emergency Medical Services Disciplinary Review Board.

15 (23) The operation by a municipality of a municipal
16 utility or the operation of a municipal power agency or
17 municipal natural gas agency when the discussion involves
18 (i) contracts relating to the purchase, sale, or delivery
19 of electricity or natural gas or (ii) the results or
20 conclusions of load forecast studies.

21 (24) Meetings of a residential health care facility
22 resident sexual assault and death review team or the
23 Residential Health Care Facility Resident Sexual Assault
24 and Death Review Teams Executive Council under the
25 Residential Health Care Facility Resident Sexual Assault
26 and Death Review Team Act.

27 (25) The establishment of reserves administration,
28 adjudication, or settlement of claims as provided in
29 Article XLV of the Illinois Insurance Code if otherwise the
30 disposition of a claim or potential claim might be
31 prejudiced, or the review or discussion of claims, loss or
32 risk management information, records, data, advice or
33 communications from or with respect to any self-insurance
34 trust administration or adjudication of any claim, or
35 insurer created by the public body.

36 (d) Definitions. For purposes of this Section:

1 "Employee" means a person employed by a public body whose
2 relationship with the public body constitutes an
3 employer-employee relationship under the usual common law
4 rules, and who is not an independent contractor.

5 "Public office" means a position created by or under the
6 Constitution or laws of this State, the occupant of which is
7 charged with the exercise of some portion of the sovereign
8 power of this State. The term "public office" shall include
9 members of the public body, but it shall not include
10 organizational positions filled by members thereof, whether
11 established by law or by a public body itself, that exist to
12 assist the body in the conduct of its business.

13 "Quasi-adjudicative body" means an administrative body
14 charged by law or ordinance with the responsibility to conduct
15 hearings, receive evidence or testimony and make
16 determinations based thereon, but does not include local
17 electoral boards when such bodies are considering petition
18 challenges.

19 (e) Final action. No final action may be taken at a closed
20 meeting. Final action shall be preceded by a public recital of
21 the nature of the matter being considered and other information
22 that will inform the public of the business being conducted.

23 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
24 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03.)

25 Section 280. The State Finance Act is amended by adding
26 Section 5.640 as follows:

27 (30 ILCS 105/5.640 new)

28 Sec. 5.640. The Sorry Works! Fund.

29 Section 285. The Counties Code is amended by changing
30 Section 5-1005 and by adding Division 6-34 as follows:

31 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

32 Sec. 5-1005. Powers. Each county shall have power:

1 1. To purchase and hold the real and personal estate
2 necessary for the uses of the county, and to purchase and hold,
3 for the benefit of the county, real estate sold by virtue of
4 judicial proceedings in which the county is plaintiff.

5 2. To sell and convey or lease any real or personal estate
6 owned by the county.

7 3. To make all contracts and do all other acts in relation
8 to the property and concerns of the county necessary to the
9 exercise of its corporate powers.

10 4. To take all necessary measures and institute proceedings
11 to enforce all laws for the prevention of cruelty to animals.

12 5. To purchase and hold or lease real estate upon which may
13 be erected and maintained buildings to be utilized for purposes
14 of agricultural experiments and to purchase, hold and use
15 personal property for the care and maintenance of such real
16 estate in connection with such experimental purposes.

17 6. To cause to be erected, or otherwise provided, suitable
18 buildings for, and maintain a county hospital and necessary
19 branch hospitals and/or a county sheltered care home or county
20 nursing home for the care of such sick, chronically ill or
21 infirm persons as may by law be proper charges upon the county,
22 or upon other governmental units, and to provide for the
23 management of the same. The county board may establish rates to
24 be paid by persons seeking care and treatment in such hospital
25 or home in accordance with their financial ability to meet such
26 charges, either personally or through a hospital plan or
27 hospital insurance, and the rates to be paid by governmental
28 units, including the State, for the care of sick, chronically
29 ill or infirm persons admitted therein upon the request of such
30 governmental units. Any hospital maintained by a county under
31 this Section is authorized to provide any service and enter
32 into any contract or other arrangement not prohibited for a
33 hospital that is licensed under the Hospital Licensing Act,
34 incorporated under the General Not-For-Profit Corporation Act,
35 and exempt from taxation under paragraph (3) of subsection (c)
36 of Section 501 of the Internal Revenue Code.

1 7. To contribute such sums of money toward erecting,
2 building, maintaining, and supporting any non-sectarian public
3 hospital located within its limits as the county board of the
4 county shall deem proper.

5 8. To purchase and hold real estate for the preservation of
6 forests, prairies and other natural areas and to maintain and
7 regulate the use thereof.

8 9. To purchase and hold real estate for the purpose of
9 preserving historical spots in the county, to restore, maintain
10 and regulate the use thereof and to donate any historical spot
11 to the State.

12 10. To appropriate funds from the county treasury to be
13 used in any manner to be determined by the board for the
14 suppression, eradication and control of tuberculosis among
15 domestic cattle in such county.

16 11. To take all necessary measures to prevent forest fires
17 and encourage the maintenance and planting of trees and the
18 preservation of forests.

19 12. To authorize the closing on Saturday mornings of all
20 offices of all county officers at the county seat of each
21 county, and to otherwise regulate and fix the days and the
22 hours of opening and closing of such offices, except when the
23 days and the hours of opening and closing of the office of any
24 county officer are otherwise fixed by law; but the power herein
25 conferred shall not apply to the office of State's Attorney and
26 the offices of judges and clerks of courts and, in counties of
27 500,000 or more population, the offices of county clerk.

28 13. To provide for the conservation, preservation and
29 propagation of insectivorous birds through the expenditure of
30 funds provided for such purpose.

31 14. To appropriate funds from the county treasury and
32 expend the same for care and treatment of tuberculosis
33 residents.

34 15. In counties having less than 1,000,000 inhabitants, to
35 take all necessary or proper steps for the extermination of
36 mosquitoes, flies or other insects within the county.

1 16. To install an adequate system of accounts and financial
2 records in the offices and divisions of the county, suitable to
3 the needs of the office and in accordance with generally
4 accepted principles of accounting for governmental bodies,
5 which system may include such reports as the county board may
6 determine.

7 17. To purchase and hold real estate for the construction
8 and maintenance of motor vehicle parking facilities for persons
9 using county buildings, but the purchase and use of such real
10 estate shall not be for revenue producing purposes.

11 18. To acquire and hold title to real property located
12 within the county, or partly within and partly outside the
13 county by dedication, purchase, gift, legacy or lease, for park
14 and recreational purposes and to charge reasonable fees for the
15 use of or admission to any such park or recreational area and
16 to provide police protection for such park or recreational
17 area. Personnel employed to provide such police protection
18 shall be conservators of the peace within such park or
19 recreational area and shall have power to make arrests on view
20 of the offense or upon warrants for violation of any of the
21 ordinances governing such park or recreational area or for any
22 breach of the peace in the same manner as the police in
23 municipalities organized and existing under the general laws of
24 the State. All such real property outside the county shall be
25 contiguous to the county and within the boundaries of the State
26 of Illinois.

27 19. To appropriate funds from the county treasury to be
28 used to provide supportive social services designed to prevent
29 the unnecessary institutionalization of elderly residents, or,
30 for operation of, and equipment for, senior citizen centers
31 providing social services to elderly residents.

32 20. To appropriate funds from the county treasury and loan
33 such funds to a county water commission created under the
34 "Water Commission Act", approved June 30, 1984, as now or
35 hereafter amended, in such amounts and upon such terms as the
36 county may determine or the county and the commission may

1 agree. The county shall not under any circumstances be
2 obligated to make such loans. The county shall not be required
3 to charge interest on any such loans.

4 21. To establish an independent entity to administer a
5 medical care risk retention trust program, to contribute such
6 sums of money to the risk retention trust program as the county
7 board of the county shall deem proper to operate the medical
8 care risk retention trust program, to establish uniform
9 eligibility requirements for participation in the risk
10 retention trust program, to appoint an administrator of the
11 risk retention trust program, to charge premiums, to establish
12 a billing procedure to collect premiums, and to ensure timely
13 administration and adjudication of claims under the program. A
14 single medical care risk retention trust program may be
15 established jointly by more than one county, in accordance with
16 an agreement between the participating counties, if at least
17 one of the participating counties has a population of 200,000
18 or more according to the most recent federal decennial census.

19 All contracts for the purchase of coal under this Section
20 shall be subject to the provisions of "An Act concerning the
21 use of Illinois mined coal in certain plants and institutions",
22 filed July 13, 1937, as amended.

23 (Source: P.A. 86-962; 86-1028.)

24 (55 ILCS 5/Div. 6-34 heading new)

25 Division 6-34. Funding for health care financing programs

26 (55 ILCS 5/6-34001 new)

27 Sec. 6-34001. Authorization. The county board of any county
28 with a population of 200,000 or more according to the most
29 recent federal decennial census (and a county with a population
30 of less than 200,000 according to the most recent federal
31 decennial census if that county is participating in a single
32 trust program with one or more other counties in accordance
33 with the requirements of paragraph (21) of Section 5-1005 of
34 this Code) may, upon finding such action necessary for

1 protection of the public health, safety, and welfare, incur an
2 indebtedness by the establishment of lines or letters of credit
3 or issue general obligation or revenue bonds for the purpose of
4 ensuring the availability of and improving hospital, medical,
5 and health services as authorized under paragraph (21) of
6 Section 5-1005 of this Code.

7 (55 ILCS 5/6-34002 new)

8 Sec. 6-34002. Bonds. The bonds authorized in Section
9 6-34001 shall be issued in such denominations, be for such term
10 or terms, and bear interest at such rate as may be specified in
11 the resolution of the county board authorizing the issuance of
12 those bonds.

13 Section 290. The Illinois Insurance Code is amended by
14 changing Sections 155.18, 155.19, 402, and 1204 and by adding
15 Section 155.18a and Article XLV as follows:

16 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

17 Sec. 155.18. (a) This Section shall apply to insurance on
18 risks based upon negligence by a physician, hospital or other
19 health care provider, referred to herein as medical liability
20 insurance. This Section shall not apply to contracts of
21 reinsurance, nor to any farm, county, district or township
22 mutual insurance company transacting business under an Act
23 entitled "An Act relating to local mutual district, county and
24 township insurance companies", approved March 13, 1936, as now
25 or hereafter amended, nor to any such company operating under a
26 special charter.

27 (b) The following standards shall apply to the making and
28 use of rates pertaining to all classes of medical liability
29 insurance:

30 (1) Rates shall not be excessive or inadequate, as
31 herein defined, nor shall they be unfairly discriminatory.
32 No rate shall be held to be excessive unless such rate is
33 unreasonably high for the insurance provided, ~~and a~~

1 ~~reasonable degree of competition does not exist in the area~~
2 ~~with respect to the classification to which such rate is~~
3 ~~applicable.~~

4 No rate shall be held inadequate unless it is
5 unreasonably low for the insurance provided ~~and continued~~
6 ~~use of it would endanger solvency of the company.~~

7 (2) Consideration shall be given, to the extent
8 applicable, to past and prospective loss experience within
9 and outside this State, to a reasonable margin for
10 underwriting profit and contingencies, to past and
11 prospective expenses both countrywide and those especially
12 applicable to this State, and to all other factors,
13 including judgment factors, deemed relevant within and
14 outside this State.

15 Consideration may also be given in the making and use
16 of rates to dividends, savings or unabsorbed premium
17 deposits allowed or returned by companies to their
18 policyholders, members or subscribers.

19 (3) The systems of expense provisions included in the
20 rates for use by any company or group of companies may
21 differ from those of other companies or groups of companies
22 to reflect the operating methods of any such company or
23 group with respect to any kind of insurance, or with
24 respect to any subdivision or combination thereof.

25 (4) Risks may be grouped by classifications for the
26 establishment of rates and minimum premiums.
27 Classification rates may be modified to produce rates for
28 individual risks in accordance with rating plans which
29 establish standards for measuring variations in hazards or
30 expense provisions, or both. Such standards may measure any
31 difference among risks that have a probable effect upon
32 losses or expenses. Such classifications or modifications
33 of classifications of risks may be established based upon
34 size, expense, management, individual experience, location
35 or dispersion of hazard, or any other reasonable
36 considerations and shall apply to all risks under the same

1 or substantially the same circumstances or conditions. The
2 rate for an established classification should be related
3 generally to the anticipated loss and expense factors of
4 the class.

5 (c) Every company writing medical liability insurance
6 shall file with the Director of Insurance the rates and rating
7 schedules it uses for medical liability insurance.

8 (1) This filing shall occur upon a company's
9 commencement of medical liability insurance business in
10 this State ~~at least annually~~ and thereafter as often as the
11 rates are changed or amended.

12 (2) For the purposes of this Section, any change in
13 premium to the company's insureds as a result of a change
14 in the company's base rates or a change in its increased
15 limits factors shall constitute a change in rates and shall
16 require a filing with the Director.

17 (3) It shall be certified in such filing by an officer
18 of the company and a qualified actuary that the company's
19 rates are based on sound actuarial principles and are not
20 inconsistent with the company's experience.

21 (d) If, after an administrative ~~a~~ hearing pursuant to
22 subsection (c) of Section 401 of this Code, the Director finds:

23 (1) that any rate, rating plan or rating system
24 violates the provisions of this Section applicable to it,
25 he shall ~~may~~ issue an order to the company which has been
26 the subject of the hearing specifying in what respects such
27 violation exists and may prohibit ~~stating when, within a~~
28 ~~reasonable period of time,~~ the further use of such rate or
29 rating system by such company in contracts of insurance
30 ~~made thereafter shall be prohibited;~~

31 (2) that the violation of any of the provisions of this
32 Section ~~applicable to it~~ by any company which has been the
33 subject of the hearing was wilful or that any company has
34 repeatedly violated any provision of this Section, he may
35 take either or both of the following actions:

36 (A) Suspend ~~suspend~~ or revoke, in whole or in part,

1 the certificate of authority of such company with
2 respect to the class of insurance which has been the
3 subject of the hearing.

4 (B) Impose a penalty of up to \$1,000 against the
5 company for each violation. Each day during which a
6 violation occurs constitutes a separate violation.

7 (e) Every company writing medical liability insurance in
8 this State shall offer to each of its medical liability
9 insureds the option to make premium payments in at least
10 quarterly installments as prescribed by and filed with the
11 Secretary. This offer shall be included in the initial offer or
12 in the first policy renewal occurring after the effective date
13 of this amendatory Act of the 94th General Assembly, but no
14 earlier than January 1, 2006.

15 (f) Every company writing medical liability insurance is
16 encouraged, but not required, to offer the opportunity for
17 participation in a plan offering deductibles to its medical
18 liability insureds. Any plan to offer deductibles shall be
19 filed with the Department.

20 (g) Medical liability insurers are encouraged, but not
21 required, to offer the opportunity for participation in a plan
22 providing premium discounts for participation in risk
23 management activities to its medical liability insureds. Any
24 such plan shall be filed with the Department.

25 (Source: P.A. 79-1434.)

26 (215 ILCS 5/155.18a new)

27 Sec. 155.18a. Professional Liability Insurance Resource
28 Center. The Secretary of Financial and Professional Regulation
29 shall establish a Professional Liability Insurance Resource
30 Center on the World Wide Web containing the names and telephone
31 numbers of all licensed companies providing medical liability
32 insurance and producers who sell medical liability insurance.
33 Each company and producer shall submit the information to the
34 Department on or before September 30 of each year in order to
35 be listed on the website. The Department is under no obligation

1 to list a company or producer on the website. Hyperlinks to
2 company websites shall be included, if available. The
3 publication of the information on the Department's website
4 shall commence on January 1, 2006. The Department shall update
5 the information on the Professional Liability Insurance
6 Resource Center at least annually.

7 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

8 Sec. 155.19. All claims filed after December 31, 1976 with
9 any insurer and all suits filed after December 31, 1976 in any
10 court in this State, alleging liability on the part of any
11 physician, hospital or other health care provider for medically
12 related injuries, shall be reported to the Director of
13 Insurance in such form and under such terms and conditions as
14 may be prescribed by the Director. Notwithstanding any other
15 provision of law to the contrary, any insurer, stop loss
16 insurer, captive insurer, risk retention group, county risk
17 retention trust, religious or charitable risk pooling trust,
18 surplus line insurer, or other entity authorized or permitted
19 by law to provide medical liability insurance in this State
20 shall report to the Secretary, in such form and under such
21 terms and conditions as may be prescribed by the Secretary, all
22 claims filed after December 31, 2005 and all suits filed after
23 December 31, 2005 in any court in this State alleging liability
24 on the part of any physician, hospital, or health care provider
25 for medically-related injuries. Each clerk of the circuit court
26 shall provide to the Secretary such information as the
27 Secretary may deem necessary to verify the accuracy and
28 completeness of reports made to the Secretary under this
29 Section. The Director shall maintain complete and accurate
30 records of all such claims and suits including their nature,
31 amount, disposition and other information as he may deem useful
32 or desirable in observing and reporting on health care provider
33 liability trends in this State. The Director shall release to
34 appropriate disciplinary and licensing agencies any such data
35 or information which may assist such agencies in improving the

1 quality of health care or which may be useful to such agencies
2 for the purpose of professional discipline.

3 With due regard for appropriate maintenance of the
4 confidentiality thereof, the Director shall ~~may~~ release, on an
5 annual basis, from time to time to the Governor, the General
6 Assembly and the general public statistical reports based on
7 such data and information.

8 If the Secretary finds that any entity required to report
9 information in its possession under this Section has violated
10 any provision of this Section by filing late, incomplete, or
11 inaccurate reports, the Secretary may fine the entity up to
12 \$1,000 for each offense. Each day during which a violation
13 occurs constitutes a separate offense.

14 The Director may promulgate such rules and regulations as
15 may be necessary to carry out the provisions of this Section.

16 (Source: P.A. 79-1434.)

17 (215 ILCS 5/402) (from Ch. 73, par. 1014)

18 Sec. 402. Examinations, investigations and hearings. (1)
19 All examinations, investigations and hearings provided for by
20 this Code may be conducted either by the Director personally,
21 or by one or more of the actuaries, technical advisors,
22 deputies, supervisors or examiners employed or retained by the
23 Department and designated by the Director for such purpose.
24 When necessary to supplement its examination procedures, the
25 Department may retain independent actuaries deemed competent
26 by the Director, independent certified public accountants, or
27 qualified examiners of insurance companies deemed competent by
28 the Director, or any combination of the foregoing, the cost of
29 which shall be borne by the company or person being examined.
30 The Director may compensate independent actuaries, certified
31 public accountants and qualified examiners retained for
32 supplementing examination procedures in amounts not to exceed
33 the reasonable and customary charges for such services. The
34 Director may also accept as a part of the Department's
35 examination of any company or person (a) a report by an

1 independent actuary deemed competent by the Director or (b) a
2 report of an audit made by an independent certified public
3 accountant. Neither those persons so designated nor any members
4 of their immediate families shall be officers of, connected
5 with, or financially interested in any company other than as
6 policyholders, nor shall they be financially interested in any
7 other corporation or person affected by the examination,
8 investigation or hearing.

9 (2) All hearings provided for in this Code shall, unless
10 otherwise specially provided, be held at such time and place as
11 shall be designated in a notice which shall be given by the
12 Director in writing to the person or company whose interests
13 are affected, at least 10 days before the date designated
14 therein. The notice shall state the subject of inquiry and the
15 specific charges, if any. The hearings shall be held in the
16 City of Springfield, the City of Chicago, or in the county
17 where the principal business address of the person or company
18 affected is located.

19 (3) For a rate increase filing in medical liability
20 insurance under Section 155.18 of this Code, the Secretary may
21 hold a hearing with the insurance company and policyholders
22 present for the purpose of receiving testimony from the
23 insurance company and policyholders regarding the rate
24 increase. The hearing must occur under written and express
25 terms and conditions that are sufficient to protect from
26 disclosure information that the subject medical liability
27 insurance company deems proprietary, confidential, or a trade
28 secret. The insurance company must give notice of the hearing
29 time, date, and location to medical liability insurance
30 policyholders whose rates have increased. Notice to
31 policyholders may be given through regular publications issued
32 to policyholders or by electronic means. Other than the cost of
33 this notice, the Department shall be responsible for the costs
34 of this hearing.

35 (Source: P.A. 87-757.)

1 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

2 Sec. 1204. (A) The Director shall promulgate rules and
3 regulations which shall require each insurer licensed to write
4 property or casualty insurance in the State and each syndicate
5 doing business on the Illinois Insurance Exchange to record and
6 report its loss and expense experience and other data as may be
7 necessary to assess the relationship of insurance premiums and
8 related income as compared to insurance costs and expenses. The
9 Director may designate one or more rate service organizations
10 or advisory organizations to gather and compile such experience
11 and data. The Director shall require each insurer licensed to
12 write property or casualty insurance in this State and each
13 syndicate doing business on the Illinois Insurance Exchange to
14 submit a report, on a form furnished by the Director, showing
15 its direct writings in this State and companywide.

16 (B) Such report required by subsection (A) of this Section
17 may include, but not be limited to, the following specific
18 types of insurance written by such insurer:

19 (1) Political subdivision liability insurance reported
20 separately in the following categories:

21 (a) municipalities;

22 (b) school districts;

23 (c) other political subdivisions;

24 (2) Public official liability insurance;

25 (3) Dram shop liability insurance;

26 (4) Day care center liability insurance;

27 (5) Labor, fraternal or religious organizations
28 liability insurance;

29 (6) Errors and omissions liability insurance;

30 (7) Officers and directors liability insurance
31 reported separately as follows:

32 (a) non-profit entities;

33 (b) for-profit entities;

34 (8) Products liability insurance;

35 (9) Medical malpractice insurance;

36 (10) Attorney malpractice insurance;

1 (11) Architects and engineers malpractice insurance;
2 and

3 (12) Motor vehicle insurance reported separately for
4 commercial and private passenger vehicles as follows:

5 (a) motor vehicle physical damage insurance;

6 (b) motor vehicle liability insurance.

7 (C) Such report may include, but need not be limited to the
8 following data, both specific to this State and companywide, in
9 the aggregate or by type of insurance for the previous year on
10 a calendar year basis:

11 (1) Direct premiums written;

12 (2) Direct premiums earned;

13 (3) Number of policies;

14 (4) Net investment income, using appropriate estimates
15 where necessary;

16 (5) Losses paid;

17 (6) Losses incurred;

18 (7) Loss reserves:

19 (a) Losses unpaid on reported claims;

20 (b) Losses unpaid on incurred but not reported
21 claims;

22 (8) Number of claims:

23 (a) Paid claims;

24 (b) Arising claims;

25 (9) Loss adjustment expenses:

26 (a) Allocated loss adjustment expenses;

27 (b) Unallocated loss adjustment expenses;

28 (10) Net underwriting gain or loss;

29 (11) Net operation gain or loss, including net
30 investment income;

31 (12) Any other information requested by the Director.

32 (C-5) Additional information required from medical and
33 legal malpractice insurers.

34 (1) In addition to the other requirements of this
35 Section, all medical and legal malpractice insurers shall
36 include the following information in the report required by

1 subsection (A) of this Section in such form and under such
2 terms and conditions as may be prescribed by the Secretary:

3 (a) paid and incurred losses by county for each of
4 the past 10 policy years; and

5 (b) earned exposures by ISO code, policy type, and
6 policy year by county for each of the past 10 years.

7 (2) All information collected by the Secretary under
8 paragraph (1) of this subsection (C-5) shall be made
9 available, on an aggregate basis, to the General Assembly
10 and the general public. This provision shall supersede any
11 other provision of law that may otherwise protect such
12 information from public disclosure as confidential. The
13 identity of the plaintiff, the defendant, the attorneys,
14 and the company shall not be disclosed.

15 (C-10) Additional information required from legal and
16 medical malpractice insurers.

17 (1) All legal and medical malpractice insurers shall
18 annually provide the Department with a copy of the
19 following:

20 (a) the company's reserve and surplus studies; and

21 (b) consulting actuarial report and data
22 supporting the company's rate filing.

23 (2) This information is deemed confidential trade
24 secrets and shall only be used for regulatory purposes.
25 This information may not be disclosed to any person by the
26 Department or any government official, employee, or agent.
27 Unlawful disclosure shall subject the disclosing person to
28 personal liability for damages and a fine of \$50,000 per
29 disclosure.

30 (D) In addition to the information which may be requested
31 under subsection (C), the Director may also request on a
32 companywide, aggregate basis, Federal Income Tax recoverable,
33 net realized capital gain or loss, net unrealized capital gain
34 or loss, and all other expenses not requested in subsection (C)
35 above.

36 (E) Violations - Suspensions - Revocations.

1 (1) Any company or person subject to this Article, who
2 willfully or repeatedly fails to observe or who otherwise
3 violates any of the provisions of this Article or any rule
4 or regulation promulgated by the Director under authority
5 of this Article or any final order of the Director entered
6 under the authority of this Article shall by civil penalty
7 forfeit to the State of Illinois a sum not to exceed
8 \$2,000. Each day during which a violation occurs
9 constitutes a separate offense.

10 (2) No forfeiture liability under paragraph (1) of this
11 subsection may attach unless a written notice of apparent
12 liability has been issued by the Director and received by
13 the respondent, or the Director sends written notice of
14 apparent liability by registered or certified mail, return
15 receipt requested, to the last known address of the
16 respondent. Any respondent so notified must be granted an
17 opportunity to request a hearing within 10 days from
18 receipt of notice, or to show in writing, why he should not
19 be held liable. A notice issued under this Section must set
20 forth the date, facts and nature of the act or omission
21 with which the respondent is charged and must specifically
22 identify the particular provision of this Article, rule,
23 regulation or order of which a violation is charged.

24 (3) No forfeiture liability under paragraph (1) of this
25 subsection may attach for any violation occurring more than
26 2 years prior to the date of issuance of the notice of
27 apparent liability and in no event may the total civil
28 penalty forfeiture imposed for the acts or omissions set
29 forth in any one notice of apparent liability exceed
30 \$100,000.

31 (4) All administrative hearings conducted pursuant to
32 this Article are subject to 50 Ill. Adm. Code 2402 and all
33 administrative hearings are subject to the Administrative
34 Review Law.

35 (5) The civil penalty forfeitures provided for in this
36 Section are payable to the General Revenue Fund of the

1 State of Illinois, and may be recovered in a civil suit in
2 the name of the State of Illinois brought in the Circuit
3 Court in Sangamon County or in the Circuit Court of the
4 county where the respondent is domiciled or has its
5 principal operating office.

6 (6) In any case where the Director issues a notice of
7 apparent liability looking toward the imposition of a civil
8 penalty forfeiture under this Section that fact may not be
9 used in any other proceeding before the Director to the
10 prejudice of the respondent to whom the notice was issued,
11 unless (a) the civil penalty forfeiture has been paid, or
12 (b) a court has ordered payment of the civil penalty
13 forfeiture and that order has become final.

14 (7) When any person or company has a license or
15 certificate of authority under this Code and knowingly
16 fails or refuses to comply with a lawful order of the
17 Director requiring compliance with this Article, entered
18 after notice and hearing, within the period of time
19 specified in the order, the Director may, in addition to
20 any other penalty or authority provided, revoke or refuse
21 to renew the license or certificate of authority of such
22 person or company, or may suspend the license or
23 certificate of authority of such person or company until
24 compliance with such order has been obtained.

25 (8) When any person or company has a license or
26 certificate of authority under this Code and knowingly
27 fails or refuses to comply with any provisions of this
28 Article, the Director may, after notice and hearing, in
29 addition to any other penalty provided, revoke or refuse to
30 renew the license or certificate of authority of such
31 person or company, or may suspend the license or
32 certificate of authority of such person or company, until
33 compliance with such provision of this Article has been
34 obtained.

35 (9) No suspension or revocation under this Section may
36 become effective until 5 days from the date that the notice

1 of suspension or revocation has been personally delivered
2 or delivered by registered or certified mail to the company
3 or person. A suspension or revocation under this Section is
4 stayed upon the filing, by the company or person, of a
5 petition for judicial review under the Administrative
6 Review Law.

7 (Source: P.A. 93-32, eff. 7-1-03.)

8 (215 ILCS 5/Art. XLV heading new)

9 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
10 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

11 (215 ILCS 5/1501 new)

12 Sec. 1501. Scope of Article. This Article applies only to
13 trusts sponsored by counties and organized under this Article
14 to provide medical malpractice insurance authorized under
15 paragraph (21) of Section 5-1005 of the Counties Code for
16 physicians and health care professionals providing medical
17 care and health care within the county's limits. In the case of
18 a single trust sponsored and organized by more than one county
19 in accordance with the requirements of paragraph (21) of
20 Section 5-1005 of the Counties Code, the powers and duties of a
21 county under this Article shall be exercised jointly by the
22 counties participating in the trust program in accordance with
23 the agreement between the counties.

24 (215 ILCS 5/1502 new)

25 Sec. 1502. Definitions. As used in this Article:

26 "Risk retention trust" or "trust" means a risk retention
27 trust created under this Article.

28 "Trust sponsor" means a county that has created a risk
29 retention trust.

30 "Pool retention fund" means a separate fund maintained for
31 payment of first dollar claims, up to a specified amount per
32 claim ("specific retention") and up to an aggregate amount for
33 a 12-month period ("aggregate retention").

1 "Contingency reserve fund" means a separate fund
2 maintained for payment of claims in excess of the pool
3 retention fund amount.

4 "Coverage grant" means the document describing specific
5 coverages and terms of coverage that are provided by a risk
6 retention trust created under this Article.

7 "Licensed service company" means an entity licensed by the
8 Department to perform claims adjusting, loss control, and data
9 processing.

10 (215 ILCS 5/1503 new)

11 Sec. 1503. Name. The corporate name of any risk retention
12 trust shall not be the same as or deceptively similar to the
13 name of any domestic insurance company or of any foreign or
14 alien insurance company authorized to transact business in this
15 State.

16 (215 ILCS 5/1504 new)

17 Sec. 1504. Principal office place of business. The
18 principal office of any risk retention trust shall be located
19 in this State.

20 (215 ILCS 5/1505 new)

21 Sec. 1505. Creation.
22 (1) Any county with a population of 200,000 or more
23 according to the most recent federal decennial census may
24 create a risk retention trust for the pooling of risks to
25 provide professional liability coverage authorized under
26 paragraph (21) of Section 5-1005 of the Counties Code for its
27 physicians and health care professionals providing medical
28 care and related health care within the county's limits. A
29 single risk retention trust may also be created jointly by more
30 than one county in accordance with the requirements of
31 paragraph (21) of Section 5-1005 of the Counties Code. A trust
32 shall be administered by at least 3 trustees who may be
33 individuals or corporate trustees and are appointed by the

1 trust sponsor and who represent physicians who have agreed in
2 writing to participate in the trust.

3 (2) The trustees shall appoint a qualified licensed
4 administrator who shall administer the affairs of the risk
5 retention trust.

6 (3) The trustees shall retain a licensed service company to
7 perform claims adjusting, loss control, and data processing and
8 any other delegated administrative duties.

9 (4) The trust sponsor, the trustees, and the trust
10 administrator shall be fiduciaries of the trust.

11 (5) A trust shall be consummated by a written trust
12 agreement and shall be subject to the laws of this State
13 governing the creation and operation of trusts, to the extent
14 not inconsistent with this Article.

15 (215 ILCS 5/1506 new)

16 Sec. 1506. Participation.

17 (1) A physician or health care professional providing
18 medical care and related health care within the county's limits
19 may participate in a risk retention trust if the physician or
20 health care professional:

21 (a) meets the underwriting standards for acceptance
22 into the trust;

23 (b) files a written application for coverage, agreeing
24 to meet all of the membership conditions of the trust;

25 (c) provides medical care and related health care in
26 the county sponsoring the trust;

27 (d) agrees to meet the ongoing loss control provisions
28 and risk pooling arrangements set forth by the trust;

29 (e) pays premium contributions on a timely basis as
30 required; and

31 (f) pays predetermined annual required contributions
32 into the contingency reserve fund.

33 (2) A physician or health care professional accepted for
34 trust membership and participating in the trust is liable for
35 payment to the trust of the amount of his or her annual premium

1 contribution and his or her annual predetermined contingency
2 reserve fund contribution.

3 (215 ILCS 5/1507 new)

4 Sec. 1507. Coverage grants; payment of claims.

5 (1) A risk retention trust may not issue coverage grants
6 until it has established a contingency reserve fund in an
7 amount deemed appropriate by the trust and filed with the
8 Department. A risk retention trust must have and at all times
9 maintain a pool retention fund or a line or letter of credit at
10 least equal to its unpaid liabilities as determined by an
11 independent actuary.

12 (2) Every coverage grant issued or delivered in this State
13 by a risk retention trust shall provide for the extent of the
14 liability of trust members to the extent that funds are needed
15 to pay a member's share of the depleted contingency reserve
16 fund needed to maintain the reserves required by this Section.

17 (3) All claims shall be paid first from the pool retention
18 fund. If that fund becomes depleted, any additional claims
19 shall be paid from the contingency reserve fund.

20 (215 ILCS 5/1508 new)

21 Sec. 1508. Applicable Illinois Insurance Code provisions.

22 Other than this Article, only Sections 155.19, 155.20, and
23 155.25 and subsections (a) through (c) of Section 155.18 of
24 this Code shall apply to county risk retention trusts. The
25 Secretary shall advise the county board of any determinations
26 made pursuant to subsection (b) of Section 155.18 of this Code.

27 (215 ILCS 5/1509 new)

28 Sec. 1509. Authorized investments. In addition to other
29 investments authorized by law, a risk retention trust with
30 assets of at least \$5,000,000 may invest in any combination of
31 the following:

32 (1) the common stocks listed on a recognized exchange
33 or market;

1 (2) stock and convertible debt investments, or
2 investment grade corporate bonds, in or issued by any
3 corporation, the book value of which may not exceed 5% of
4 the total intergovernmental risk management entity's
5 investment account at book value in which those securities
6 are held, determined as of the date of the investment,
7 provided that investments in the stock of any one
8 corporation may not exceed 5% of the total outstanding
9 stock of the corporation and that the investments in the
10 convertible debt of any one corporation may not exceed 5%
11 of the total amount of such debt that may be outstanding;

12 (3) the straight preferred stocks or convertible
13 preferred stocks and convertible debt securities issued or
14 guaranteed by a corporation whose common stock is listed on
15 a recognized exchange or market;

16 (4) mutual funds or commingled funds that meet the
17 following requirements:

18 (A) the mutual fund or commingled fund is managed
19 by an investment company as defined in and registered
20 under the federal Investment Company Act of 1940 and
21 registered under the Illinois Securities Law of 1953 or
22 an investment adviser as defined under the federal
23 Investment Advisers Act of 1940;

24 (B) the mutual fund has been in operation for at
25 least 5 years; and

26 (C) the mutual fund has total net assets of
27 \$150,000,000 or more;

28 (5) commercial grade real estate located in the State
29 of Illinois.

30 Any investment adviser retained by a trust must be a
31 fiduciary who has the power to manage, acquire, or dispose of
32 any asset of the trust and has acknowledged in writing that he
33 or she is a fiduciary with respect to the trust and that he or
34 she will adhere to all of the guidelines of the trust and is
35 one or more of the following:

36 (i) registered as an investment adviser under the

1 federal Investment Advisers Act of 1940;

2 (ii) registered as an investment adviser under the
3 Illinois Securities Law of 1953;

4 (iii) a bank as defined in the federal Investment
5 Advisers Act of 1940;

6 (iv) an insurance company authorized to transact
7 business in this State.

8 Nothing in this Section shall be construed to authorize a
9 risk retention trust to accept the deposit of public funds
10 except for trust risk retention purposes.

11 ARTICLE 3

12 Section 305. The Regulatory Sunset Act is amended by
13 changing Section 4.17 and adding Section 4.26 as follows:

14 (5 ILCS 80/4.17)

15 Sec. 4.17. Acts repealed on January 1, 2007. The following
16 are repealed on January 1, 2007:

17 The Boiler and Pressure Vessel Repairer Regulation
18 Act.

19 The Structural Pest Control Act.

20 Articles II, III, IV, V, V 1/2, VI, VIIA, VIIB, VIIC,
21 XVII, XXXI, XXXI 1/4, and XXXI 3/4 of the Illinois
22 Insurance Code.

23 The Clinical Psychologist Licensing Act.

24 The Illinois Optometric Practice Act of 1987.

25 ~~The Medical Practice Act of 1987.~~

26 The Environmental Health Practitioner Licensing Act.

27 (Source: P.A. 92-837, eff. 8-22-02.)

28 (5 ILCS 80/4.26 new)

29 Sec. 4.26. Act repealed on January 1, 2016. The following
30 Act is repealed on January 1, 2016:

31 The Medical Practice Act of 1987.

1 Section 310. The Medical Practice Act of 1987 is amended by
2 changing Sections 7, 22, 23, 24, and 36 as follows:

3 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

5 Sec. 7. Medical Disciplinary Board.

6 (A) There is hereby created the Illinois State Medical
7 Disciplinary Board (hereinafter referred to as the
8 "Disciplinary Board"). The Disciplinary Board shall consist of
9 members, to be appointed by the Governor by and with the
10 advice and consent of the Senate. All shall be residents of the
11 State, not more than 5 of whom shall be members of the same
12 political party. Five members shall be physicians licensed to
13 practice medicine in all of its branches in Illinois possessing
14 the degree of doctor of medicine. Two shall be members of the
15 public, who shall not be engaged in any way, directly or
16 indirectly, as providers of health care. The 2 public members
17 shall act as voting members. One member shall be a physician
18 licensed to practice in Illinois possessing the degree of
19 doctor of osteopathy or osteopathic medicine. One member shall
20 be a physician licensed to practice in Illinois and possessing
21 the degree of doctor of chiropractic.

22 (B) Members of the Disciplinary Board shall be appointed
23 for terms of 4 years. Upon the expiration of the term of any
24 member, their successor shall be appointed for a term of 4
25 years by the Governor by and with the advice and consent of the
26 Senate. The Governor shall fill any vacancy for the remainder
27 of the unexpired term by and with the advice and consent of the
28 Senate. Upon recommendation of the Board, any member of the
29 Disciplinary Board may be removed by the Governor for
30 misfeasance, malfeasance, or wilful neglect of duty, after
31 notice, and a public hearing, unless such notice and hearing
32 shall be expressly waived in writing. Each member shall serve
33 on the Disciplinary Board until their successor is appointed
34 and qualified. No member of the Disciplinary Board shall serve
35 more than 2 consecutive 4 year terms.

1 In making appointments the Governor shall attempt to insure
2 that the various social and geographic regions of the State of
3 Illinois are properly represented.

4 In making the designation of persons to act for the several
5 professions represented on the Disciplinary Board, the
6 Governor shall give due consideration to recommendations by
7 members of the respective professions and by organizations
8 therein.

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

14 (D) (Blank).

15 (E) Four voting members of the Disciplinary Board shall
16 constitute a quorum. A vacancy in the membership of the
17 Disciplinary Board shall not impair the right of a quorum to
18 exercise all the rights and perform all the duties of the
19 Disciplinary Board. Any action taken by the Disciplinary Board
20 under this Act may be authorized by resolution at any regular
21 or special meeting and each such resolution shall take effect
22 immediately. The Disciplinary Board shall meet at least
23 quarterly. The Disciplinary Board is empowered to adopt all
24 rules and regulations necessary and incident to the powers
25 granted to it under this Act.

26 (F) Each member, and member-officer, of the Disciplinary
27 Board shall receive a per diem stipend as the Director of the
28 Department, hereinafter referred to as the Director, shall
29 determine. The Director shall also determine the per diem
30 stipend that each ex-officio member shall receive. Each member
31 shall be paid their necessary expenses while engaged in the
32 performance of their duties.

33 (G) The Director shall select a Chief Medical Coordinator
34 and not less than 2 ~~a~~ Deputy Medical Coordinators ~~Coordinator~~
35 who shall not be members of the Disciplinary Board. Each
36 medical coordinator shall be a physician licensed to practice

1 medicine in all of its branches, and the Director shall set
2 their rates of compensation. The Director shall assign at least
3 one medical coordinator to a region composed of Cook County and
4 such other counties as the Director may deem appropriate, and
5 such medical coordinator or coordinators shall locate their
6 office in Chicago. The Director shall assign at least one ~~the~~
7 ~~remaining~~ medical coordinator to a region composed of the
8 balance of counties in the State, and such medical coordinator
9 or coordinators shall locate their office in Springfield. Each
10 medical coordinator shall be the chief enforcement officer of
11 this Act in his or her ~~their~~ assigned region and shall serve at
12 the will of the Disciplinary Board.

13 The Director shall employ, in conformity with the Personnel
14 Code, not less than one full time investigator for every 2,500
15 ~~5000~~ physicians licensed in the State. Each investigator shall
16 be a college graduate with at least 2 years' investigative
17 experience or one year advanced medical education. Upon the
18 written request of the Disciplinary Board, the Director shall
19 employ, in conformity with the Personnel Code, such other
20 professional, technical, investigative, and clerical help,
21 either on a full or part-time basis as the Disciplinary Board
22 deems necessary for the proper performance of its duties.

23 (H) Upon the specific request of the Disciplinary Board,
24 signed by either the chairman, vice chairman, or a medical
25 coordinator of the Disciplinary Board, the Department of Human
26 Services or the Department of State Police shall make available
27 any and all information that they have in their possession
28 regarding a particular case then under investigation by the
29 Disciplinary Board.

30 (I) Members of the Disciplinary Board shall be immune from
31 suit in any action based upon any disciplinary proceedings or
32 other acts performed in good faith as members of the
33 Disciplinary Board.

34 (J) The Disciplinary Board may compile and establish a
35 statewide roster of physicians and other medical
36 professionals, including the several medical specialties, of

1 such physicians and medical professionals, who have agreed to
2 serve from time to time as advisors to the medical
3 coordinators. Such advisors shall assist the medical
4 coordinators or the Disciplinary Board in their investigations
5 and participation in complaints against physicians. Such
6 advisors shall serve under contract and shall be reimbursed at
7 a reasonable rate for the services provided, plus reasonable
8 expenses incurred. While serving in this capacity, the advisor,
9 for any act undertaken in good faith and in the conduct of
10 their duties under this Section, shall be immune from civil
11 suit.

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

13 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

15 Sec. 22. Disciplinary action.

16 (A) The Department may revoke, suspend, place on
17 probationary status, refuse to renew, or take any other
18 disciplinary action as the Department may deem proper with
19 regard to the license or visiting professor permit of any
20 person issued under this Act to practice medicine, or to treat
21 human ailments without the use of drugs and without operative
22 surgery upon any of the following grounds:

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

25 (a) a facility licensed pursuant to the Ambulatory
26 Surgical Treatment Center Act;

27 (b) an institution licensed under the Hospital
28 Licensing Act; or

29 (c) an ambulatory surgical treatment center or
30 hospitalization or care facility maintained by the
31 State or any agency thereof, where such department or
32 agency has authority under law to establish and enforce
33 standards for the ambulatory surgical treatment
34 centers, hospitalization, or care facilities under its
35 management and control; or

1 (d) ambulatory surgical treatment centers,
2 hospitalization or care facilities maintained by the
3 Federal Government; or

4 (e) ambulatory surgical treatment centers,
5 hospitalization or care facilities maintained by any
6 university or college established under the laws of
7 this State and supported principally by public funds
8 raised by taxation.

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

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

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

18 (5) Engaging in dishonorable, unethical or
19 unprofessional conduct of a character likely to deceive,
20 defraud or harm the public.

21 (6) Obtaining any fee by fraud, deceit, or
22 misrepresentation.

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

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

29 (9) Fraud or misrepresentation in applying for, or
30 procuring, a license under this Act or in connection with
31 applying for renewal of a license under this Act.

32 (10) Making a false or misleading statement regarding
33 their skill or the efficacy or value of the medicine,
34 treatment, or remedy prescribed by them at their direction
35 in the treatment of any disease or other condition of the
36 body or mind.

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

3 (12) Disciplinary action of another state or
4 jurisdiction against a license or other authorization to
5 practice as a medical doctor, doctor of osteopathy, doctor
6 of osteopathic medicine or doctor of chiropractic, a
7 certified copy of the record of the action taken by the
8 other state or jurisdiction being prima facie evidence
9 thereof.

10 (13) Violation of any provision of this Act or of the
11 Medical Practice Act prior to the repeal of that Act, or
12 violation of the rules, or a final administrative action of
13 the Director, after consideration of the recommendation of
14 the Disciplinary Board.

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

1 corporations, and providing medical, surgical and
2 scientific research and knowledge by employees of these
3 corporations if such employees are licensed under this Act,
4 or from pooling, sharing, dividing, or apportioning the
5 fees and monies received by the partnership or joint
6 venture in accordance with the partnership or joint venture
7 agreement. Nothing contained in this subsection shall
8 abrogate the right of 2 or more persons, holding valid and
9 current licenses under this Act, to each receive adequate
10 compensation for concurrently rendering professional
11 services to a patient and divide a fee; provided, the
12 patient has full knowledge of the division, and, provided,
13 that the division is made in proportion to the services
14 performed and responsibility assumed by each.

15 (15) A finding by the Medical Disciplinary Board that
16 the registrant after having his or her license placed on
17 probationary status or subjected to conditions or
18 restrictions violated the terms of the probation or failed
19 to comply with such terms or conditions.

20 (16) Abandonment of a patient.

21 (17) Prescribing, selling, administering,
22 distributing, giving or self-administering any drug
23 classified as a controlled substance (designated product)
24 or narcotic for other than medically accepted therapeutic
25 purposes.

26 (18) Promotion of the sale of drugs, devices,
27 appliances or goods provided for a patient in such manner
28 as to exploit the patient for financial gain of the
29 physician.

30 (19) Offering, undertaking or agreeing to cure or treat
31 disease by a secret method, procedure, treatment or
32 medicine, or the treating, operating or prescribing for any
33 human condition by a method, means or procedure which the
34 licensee refuses to divulge upon demand of the Department.

35 (20) Immoral conduct in the commission of any act
36 including, but not limited to, commission of an act of

1 sexual misconduct related to the licensee's practice.

2 (21) Wilfully making or filing false records or reports
3 in his or her practice as a physician, including, but not
4 limited to, false records to support claims against the
5 medical assistance program of the Department of Public Aid
6 under the Illinois Public Aid Code.

7 (22) Wilful omission to file or record, or wilfully
8 impeding the filing or recording, or inducing another
9 person to omit to file or record, medical reports as
10 required by law, or wilfully failing to report an instance
11 of suspected abuse or neglect as required by law.

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

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

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

29 (26) A pattern of practice or other behavior which
30 demonstrates incapacity or incompetence to practice under
31 this Act.

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

35 (28) Physical illness, including, but not limited to,
36 deterioration through the aging process, or loss of motor

1 skill which results in a physician's inability to practice
2 under this Act with reasonable judgment, skill or safety.

3 (29) Cheating on or attempt to subvert the licensing
4 examinations administered under this Act.

5 (30) Wilfully or negligently violating the
6 confidentiality between physician and patient except as
7 required by law.

8 (31) The use of any false, fraudulent, or deceptive
9 statement in any document connected with practice under
10 this Act.

11 (32) Aiding and abetting an individual not licensed
12 under this Act in the practice of a profession licensed
13 under this Act.

14 (33) Violating state or federal laws or regulations
15 relating to controlled substances, legend drugs, or
16 ephedra, as defined in the Ephedra Prohibition Act.

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

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

1 (36) Failure to report to the Department any adverse
2 judgment, settlement, or award arising from a liability
3 claim related to acts or conduct similar to acts or conduct
4 which would constitute grounds for action as defined in
5 this Section.

6 (37) Failure to transfer copies of medical records as
7 required by law.

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

13 (39) Violating the Health Care Worker Self-Referral
14 Act.

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

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

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

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

26 Except for actions involving the ground numbered (26), all
27 ~~All~~ proceedings to suspend, revoke, place on probationary
28 status, or take any other disciplinary action as the Department
29 may deem proper, with regard to a license on any of the
30 foregoing grounds, must be commenced within 5 ~~3~~ years next
31 after receipt by the Department of a complaint alleging the
32 commission of or notice of the conviction order for any of the
33 acts described herein. Except for the grounds numbered (8),
34 (9), (26), and (29), no action shall be commenced more than 10
35 ~~5~~ years after the date of the incident or act alleged to have
36 violated this Section. For actions involving the ground

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

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

32 The Department may refuse to issue or take disciplinary
33 action concerning the license of any person who fails to file a
34 return, or to pay the tax, penalty or interest shown in a filed
35 return, or to pay any final assessment of tax, penalty or
36 interest, as required by any tax Act administered by the

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

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

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

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

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

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

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

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

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

31 An individual licensed under this Act, affected under this
32 Section, shall be afforded an opportunity to demonstrate to the
33 Disciplinary Board that they can resume practice in compliance
34 with acceptable and prevailing standards under the provisions
35 of their license.

36 The Department may promulgate rules for the imposition of

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

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

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

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

32 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

34 Sec. 23. Reports relating to professional conduct and
35 capacity.

1 (A) Entities required to report.

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

1 Disciplinary Board that such reports are no longer
2 required, in a manner and at such time as the Disciplinary
3 Board shall determine by rule. The filing of such reports
4 shall be construed as the filing of a report for purposes
5 of subsection (C) of this Section.

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

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

25 (4) State's Attorneys. The State's Attorney of each
26 county shall report to the Disciplinary Board all instances
27 in which a person licensed under this Act is convicted or
28 otherwise found guilty of the commission of any felony. The
29 State's Attorney of each county may report to the
30 Disciplinary Board through a verified complaint any
31 instance in which the State's Attorney believes that a
32 physician has willfully violated the notice requirements
33 of the Parental Notice of Abortion Act of 1995.

34 (5) State agencies. All agencies, boards, commissions,
35 departments, or other instrumentalities of the government
36 of the State of Illinois shall report to the Disciplinary

1 Board any instance arising in connection with the
2 operations of such agency, including the administration of
3 any law by such agency, in which a person licensed under
4 this Act has either committed an act or acts which may be a
5 violation of this Act or which may constitute
6 unprofessional conduct related directly to patient care or
7 which indicates that a person licensed under this Act may
8 be mentally or physically disabled in such a manner as to
9 endanger patients under that person's care.

10 (B) Mandatory reporting. All reports required by items
11 (34), (35), and (36) of subsection (A) of Section 22 and by
12 Section 23 shall be submitted to the Disciplinary Board in a
13 timely fashion. The reports shall be filed in writing within 60
14 days after a determination that a report is required under this
15 Act. All reports shall contain the following information:

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

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

20 (3) The name and date of birth ~~or other means of~~
21 ~~identification~~ of any patient or patients whose treatment
22 is a subject of the report, if available, or other means of
23 identification if such information is not available, and
24 identification of the hospital or other healthcare
25 facility where the care at issue in the report was
26 rendered, provided, however, no medical records may be
27 revealed ~~without the written consent of the patient or~~
28 ~~patients~~.

29 (4) A brief description of the facts which gave rise to
30 the issuance of the report, including the dates of any
31 occurrences deemed to necessitate the filing of the report.

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

35 (6) Any further pertinent information which the
36 reporting party deems to be an aid in the evaluation of the

1 report.

2 ~~The Department shall have the right to inform patients of~~
3 ~~the right to provide written consent for the Department to~~
4 ~~obtain copies of hospital and medical records.~~ The Disciplinary
5 Board or Department may also exercise the power under Section
6 38 of this Act to subpoena copies of hospital or medical
7 records in mandatory report cases alleging death or permanent
8 bodily injury ~~when consent to obtain records is not provided by~~
9 ~~a patient or legal representative.~~ Appropriate rules shall be
10 adopted by the Department with the approval of the Disciplinary
11 Board.

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

17 Nothing contained in this Section shall act to in any way,
18 waive or modify the confidentiality of medical reports and
19 committee reports to the extent provided by law. Any
20 information reported or disclosed shall be kept for the
21 confidential use of the Disciplinary Board, the Medical
22 Coordinators, the Disciplinary Board's attorneys, the medical
23 investigative staff, and authorized clerical staff, as
24 provided in this Act, and shall be afforded the same status as
25 is provided information concerning medical studies in Part 21
26 of Article VIII of the Code of Civil Procedure, except that the
27 Department may disclose information and documents to a federal,
28 State, or local law enforcement agency pursuant to a subpoena
29 in an ongoing criminal investigation. Furthermore, information
30 and documents disclosed to a federal, State, or local law
31 enforcement agency may be used by that agency only for the
32 investigation and prosecution of a criminal offense.

33 (C) Immunity from prosecution. Any individual or
34 organization acting in good faith, and not in a wilful and
35 wanton manner, in complying with this Act by providing any
36 report or other information to the Disciplinary Board or a peer

1 review committee, or assisting in the investigation or
2 preparation of such information, or by voluntarily reporting to
3 the Disciplinary Board or a peer review committee information
4 regarding alleged errors or negligence by a person licensed
5 under this Act, or by participating in proceedings of the
6 Disciplinary Board or a peer review committee, or by serving as
7 a member of the Disciplinary Board or a peer review committee,
8 shall not, as a result of such actions, be subject to criminal
9 prosecution or civil damages.

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

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

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

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

36 (E) Deliberations of Disciplinary Board. Upon the receipt

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

8 The notification shall include a written notice setting
9 forth the person's right to examine the report. Included in
10 such notification shall be the address at which the file is
11 maintained, the name of the custodian of the reports, and the
12 telephone number at which the custodian may be reached. The
13 person who is the subject of the report shall submit a written
14 statement responding, clarifying, adding to, or proposing the
15 amending of the report previously filed. The person who is the
16 subject of the report shall also submit with the written
17 statement any medical records related to the report. The
18 statement and accompanying medical records shall become a
19 permanent part of the file and must be received by the
20 Disciplinary Board no more than 30 ~~60~~ days after the date on
21 which the person was notified by the Disciplinary Board of the
22 existence of the original report.

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

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

1 that there are not sufficient facts to warrant further
2 investigation or action.

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

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

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

31 (H) If any such person violates the provisions of this
32 Section an action may be brought in the name of the People of
33 the State of Illinois, through the Attorney General of the
34 State of Illinois, for an order enjoining such violation or for
35 an order enforcing compliance with this Section. Upon filing of
36 a verified petition in such court, the court may issue a

1 temporary restraining order without notice or bond and may
2 preliminarily or permanently enjoin such violation, and if it
3 is established that such person has violated or is violating
4 the injunction, the court may punish the offender for contempt
5 of court. Proceedings under this paragraph shall be in addition
6 to, and not in lieu of, all other remedies and penalties
7 provided for by this Section.

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

10 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

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

12 Sec. 24. Report of violations; medical associations. Any
13 physician licensed under this Act, the Illinois State Medical
14 Society, the Illinois Association of Osteopathic Physicians
15 and Surgeons, the Illinois Chiropractic Society, the Illinois
16 Prairie State Chiropractic Association, or any component
17 societies of any of these 4 groups, and any other person, may
18 report to the Disciplinary Board any information the physician,
19 association, society, or person may have that appears to show
20 that a physician is or may be in violation of any of the
21 provisions of Section 22 of this Act.

22 The Department may enter into agreements with the Illinois
23 State Medical Society, the Illinois Association of Osteopathic
24 Physicians and Surgeons, the Illinois Prairie State
25 Chiropractic Association, or the Illinois Chiropractic Society
26 to allow these organizations to assist the Disciplinary Board
27 in the review of alleged violations of this Act. Subject to the
28 approval of the Department, any organization party to such an
29 agreement may subcontract with other individuals or
30 organizations to assist in review.

31 Any physician, association, society, or person
32 participating in good faith in the making of a report, under
33 this Act or participating in or assisting with an investigation
34 or review under this Act ~~Section~~ shall have immunity from any
35 civil, criminal, or other liability that might result by reason

1 of those actions.

2 The medical information in the custody of an entity under
3 contract with the Department participating in an investigation
4 or review shall be privileged and confidential to the same
5 extent as are information and reports under the provisions of
6 Part 21 of Article VIII of the Code of Civil Procedure.

7 Upon request by the Department after a mandatory report has
8 been filed with the Department, an attorney for any party
9 seeking to recover damages for injuries or death by reason of
10 medical, hospital, or other healing art malpractice shall
11 provide patient records related to the physician involved in
12 the disciplinary proceeding to the Department within 30 days of
13 the Department's request for use by the Department in any
14 disciplinary matter under this Act. An attorney who provides
15 patient records to the Department in accordance with this
16 requirement shall not be deemed to have violated any
17 attorney-client privilege. Notwithstanding any other provision
18 of law, consent by a patient shall not be required for the
19 provision of patient records in accordance with this
20 requirement.

21 For the purpose of any civil or criminal proceedings, the
22 good faith of any physician, association, society or person
23 shall be presumed. The Disciplinary Board may request the
24 Illinois State Medical Society, the Illinois Association of
25 Osteopathic Physicians and Surgeons, the Illinois Prairie
26 State Chiropractic Association, or the Illinois Chiropractic
27 Society to assist the Disciplinary Board in preparing for or
28 conducting any medical competency examination as the Board may
29 deem appropriate.

30 (Source: P.A. 88-324.)

31 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

33 Sec. 36. Upon the motion of either the Department or the
34 Disciplinary Board or upon the verified complaint in writing of
35 any person setting forth facts which, if proven, would

1 constitute grounds for suspension or revocation under Section
2 22 of this Act, the Department shall investigate the actions of
3 any person, so accused, who holds or represents that they hold
4 a license. Such person is hereinafter called the accused.

5 The Department shall, before suspending, revoking, placing
6 on probationary status, or taking any other disciplinary action
7 as the Department may deem proper with regard to any license at
8 least 30 days prior to the date set for the hearing, notify the
9 accused in writing of any charges made and the time and place
10 for a hearing of the charges before the Disciplinary Board,
11 direct them to file their written answer thereto to the
12 Disciplinary Board under oath within 20 days after the service
13 on them of such notice and inform them that if they fail to
14 file such answer default will be taken against them and their
15 license may be suspended, revoked, placed on probationary
16 status, or have other disciplinary action, including limiting
17 the scope, nature or extent of their practice, as the
18 Department may deem proper taken with regard thereto.

19 Where a physician has been found, upon complaint and
20 investigation of the Department, and after hearing, to have
21 performed an abortion procedure in a wilful and wanton manner
22 upon a woman who was not pregnant at the time such abortion
23 procedure was performed, the Department shall automatically
24 revoke the license of such physician to practice medicine in
25 Illinois.

26 Such written notice and any notice in such proceedings
27 thereafter may be served by delivery of the same, personally,
28 to the accused person, or by mailing the same by registered or
29 certified mail to the address last theretofore specified by the
30 accused in their last notification to the Department.

31 All information gathered by the Department during its
32 investigation including information subpoenaed under Section
33 23 or 38 of this Act and the investigative file shall be kept
34 for the confidential use of the Director, Disciplinary Board,
35 the Medical Coordinators, persons employed by contract to
36 advise the Medical Coordinator or the Department, the

1 Disciplinary Board's attorneys, the medical investigative
2 staff, and authorized clerical staff, as provided in this Act
3 and shall be afforded the same status as is provided
4 information concerning medical studies in Part 21 of Article
5 VIII of the Code of Civil Procedure, except that the Department
6 may disclose information and documents to a federal, State, or
7 local law enforcement agency pursuant to a subpoena in an
8 ongoing criminal investigation. Furthermore, information and
9 documents disclosed to a federal, State, or local law
10 enforcement agency may be used by that agency only for the
11 investigation and prosecution of a criminal offense.

12 (Source: P.A. 90-699, eff. 1-1-99.)

13 Section 315. The Clerks of Courts Act is amended by adding
14 Section 27.10 as follows:

15 (705 ILCS 105/27.10 new)

16 Sec. 27.10. Secretary of Financial and Professional
17 Regulation. Each clerk of the circuit court shall provide to
18 the Secretary of Financial and Professional Regulation such
19 information as he or she requests under Section 155.19 of the
20 Illinois Insurance Code.

21 ARTICLE 4

22 Section 405. The Health Care Arbitration Act is amended by
23 changing Sections 8 and 9 as follows:

24 (710 ILCS 15/8) (from Ch. 10, par. 208)

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

27 (a) The agreement is not a condition to the rendering of
28 health care services by any party and the agreement has been
29 executed by the recipient of health care services at the
30 inception of or during the term of provision of services ~~for a~~
31 ~~specific cause~~ by either a health care provider or a hospital;

1 and

2 (b) The agreement is a separate instrument complete in
3 itself and not a part of any other contract or instrument and
4 an executed copy of the agreement shall be provided to the
5 patient or the patient's legal representative upon signing; and

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

9 (d) The agreement shall not limit, impair, or waive the
10 procedural rights to be heard, to present material evidence, to
11 cross-examine witnesses, and to be represented by an attorney,
12 or other procedural rights of due process of any party.

13 ~~(e) As a part of the discharge planning process the patient~~
14 ~~or, if appropriate, members of his family must be given a copy~~
15 ~~of the health care arbitration agreement previously executed by~~
16 ~~or for the patient and shall re-affirm it.~~

17 ~~Failure to comply with this provision during the discharge~~
18 ~~planning process shall void the health care arbitration~~
19 ~~agreement.~~

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

21 (710 ILCS 15/9) (from Ch. 10, par. 209)

22 Sec. 9. Mandatory Provisions.

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

25 (b) (Blank). ~~Every health care arbitration agreement in~~
26 ~~relation to health care services rendered during~~
27 ~~hospitalization shall specify the date of commencement of~~
28 ~~hospitalization. Every health care arbitration agreement in~~
29 ~~relation to health care services not rendered during~~
30 ~~hospitalization shall state the specific cause for which the~~
31 ~~services are provided.~~

32 (c) Every health care arbitration agreement may be
33 cancelled by any signatory ~~(1)~~ within 30 ~~60~~ days of its
34 execution ~~or within 60 days of the date of the patient's~~
35 ~~discharge from the hospital, whichever is later, as to an~~

1 ~~agreement in relation to health care services rendered during~~
2 ~~hospitalization, provided, that if executed other than at the~~
3 ~~time of discharge of the patient from the hospital, the health~~
4 ~~care arbitration agreement be reaffirmed at the time of the~~
5 ~~discharge planning process in the same manner as provided for~~
6 ~~in the execution of the original agreement; or (2) within 60~~
7 ~~days of the date of its execution, or the last date of~~
8 ~~treatment by the health care provider, whichever is later, as~~
9 ~~to an agreement in relation to health care services not~~
10 ~~rendered during hospitalization.~~ Provided, that no health care
11 arbitration agreement shall be valid after 5 ~~2~~ years from the
12 date of its execution. An employee of a hospital or health care
13 provider who is not a signatory to an agreement may cancel such
14 agreement as to himself until 30 days following his
15 notification that he is a party to a dispute or issue on which
16 arbitration has been demanded pursuant to such agreement. If
17 any person executing a health care arbitration agreement dies
18 before the period of cancellation as outlined above, the
19 personal representative of the decedent shall have the right to
20 cancel the health care arbitration agreement within 60 days of
21 the date of his appointment as the legal representative of the
22 decedent's estate. ~~Provided, that if no legal representative is~~
23 ~~appointed within 6 months of the death of said decedent the~~
24 ~~next of kin of such decedent shall have the right to cancel the~~
25 ~~health care arbitration agreement within 8 months from the date~~
26 ~~of death.~~

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

31 "AGREEMENT TO ARBITRATE HEALTH CARE

32 NEGLIGENCE CLAIMS

33 NOTICE TO PATIENT

34 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
35 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
36 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO

1 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
2 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
3 REPLACED BY AN ARBITRATION PROCEDURE.

4 THIS AGREEMENT MAY BE CANCELLED WITHIN 30 ~~60~~ DAYS OF
5 SIGNING ~~OR 60 DAYS AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS~~
6 ~~AFTER YOUR LAST MEDICAL TREATMENT IN RELATION TO HEALTH~~
7 ~~CARE SERVICES NOT RENDERED DURING HOSPITALIZATION.~~

8 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
9 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
10 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
11 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
12 DECISION OF THE ARBITRATION PANEL."

13 (e) An ~~an~~ executed copy of the AGREEMENT TO ARBITRATE
14 HEALTH CARE CLAIMS ~~and any reaffirmation of that agreement as~~
15 ~~required by this Act~~ shall be given to the patient or the
16 patient's legally authorized representative upon signing
17 ~~during the time of the discharge planning process or at the~~
18 ~~time of discharge.~~

19 (f) The changes to this Section made by this amendatory Act
20 of the 94th General Assembly apply to health care arbitration
21 agreements executed on or after its effective date.

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

23 Section 410. The Code of Civil Procedure is amended by
24 reenacting and changing Sections 2-402, 2-622, 2-1107.1,
25 2-1109, 2-1701, 2-1702, and 8-2501, by changing Sections
26 2-1114, 2-1704, and 8-1901, and by adding Sections 2-1105.01,
27 2-1704.5, 2-1706.5, 2-1721 as follows:

28 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

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

31 Sec. 2-402. Respondents in discovery. The plaintiff in any
32 civil action may designate as respondents in discovery in his
33 or her pleading those individuals or other entities, other than
34 the named defendants, believed by the plaintiff to have

1 information essential to the determination of who should
2 properly be named as additional defendants in the action.

3 Persons or entities so named as respondents in discovery
4 shall be required to respond to discovery by the plaintiff in
5 the same manner as are defendants and may, on motion of the
6 plaintiff, be added as defendants if the evidence discloses the
7 existence of probable cause for such action.

8 A person or entity named a respondent in discovery may upon
9 his or her own motion be made a defendant in the action, in
10 which case the provisions of this Section are no longer
11 applicable to that person.

12 A copy of the complaint shall be served on each person or
13 entity named as a respondent in discovery.

14 Each respondent in discovery shall be paid expenses and
15 fees as provided for witnesses.

16 A person or entity named as a respondent in discovery in
17 any civil action may be made a defendant in the same action at
18 any time within 6 months after being named as a respondent in
19 discovery, even though the time during which an action may
20 otherwise be initiated against him or her may have expired
21 during such 6 month period. An extension from the original
22 6-month period for good cause may be granted only once for up
23 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
24 good cause. Notwithstanding the limitations in this Section,
25 the court may grant additional reasonable extensions from this
26 6-month period for a failure or refusal on the part of the
27 respondent to comply with timely filed discovery.

28 The changes to this Section made by this amendatory Act of
29 the 94th General Assembly apply to causes of action pending on
30 or after its effective date.

31 (Source: P.A. 86-483.)

32 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

35 Sec. 2-622. Healing art malpractice.

1 (a) In any action, whether in tort, contract or otherwise,
2 in which the plaintiff seeks damages for injuries or death by
3 reason of medical, hospital, or other healing art malpractice,
4 the plaintiff's attorney or the plaintiff, if the plaintiff is
5 proceeding pro se, shall file an affidavit, attached to the
6 original and all copies of the complaint, declaring one of the
7 following:

8 1. That the affiant has consulted and reviewed the
9 facts of the case with a health professional who the
10 affiant reasonably believes: (i) is knowledgeable in the
11 relevant issues involved in the particular action; (ii)
12 practices or has practiced within the last 5 ~~6~~ years or
13 teaches or has taught within the last 5 ~~6~~ years in the same
14 area of health care or medicine that is at issue in the
15 particular action; and (iii) meets the expert witness
16 standards set forth in paragraphs (a) through (d) of
17 Section 8-2501; is qualified by experience or demonstrated
18 ~~competence in the subject of the case;~~ that the reviewing
19 health professional has determined in a written report,
20 after a review of the medical record and other relevant
21 material involved in the particular action that there is a
22 reasonable and meritorious cause for the filing of such
23 action; and that the affiant has concluded on the basis of
24 the reviewing health professional's review and
25 consultation that there is a reasonable and meritorious
26 cause for filing of such action. A single written report
27 must be filed to cover each defendant in the action. As to
28 defendants who are individuals, the ~~If the affidavit is~~
29 ~~filed as to a defendant who is a physician licensed to~~
30 ~~treat human ailments without the use of drugs or medicines~~
31 ~~and without operative surgery, a dentist, a podiatrist, a~~
32 ~~psychologist, or a naprapath, The written report must be~~
33 from a health professional licensed in the same profession,
34 with the same class of license, as the defendant in
35 accordance with items (i) through (iii) of this paragraph
36 1. For written reports ~~affidavits~~ filed as to all other

1 defendants, who are not individuals, the written report
2 must be from a physician licensed to practice medicine in
3 all its branches who is qualified by experience with the
4 standard of care, methods, procedures and treatments
5 relevant to the allegations at issue in the case. In either
6 event, the written report ~~affidavit~~ must identify the
7 profession of the reviewing health professional. A copy of
8 the written report, clearly identifying the plaintiff and
9 the reasons for the reviewing health professional's
10 determination that a reasonable and meritorious cause for
11 the filing of the action exists, including the reviewing
12 health care professional's name, address, telephone
13 number, current license number, and state of licensure,
14 must be attached to the affidavit, ~~but information which~~
15 ~~would identify the reviewing health professional may be~~
16 ~~deleted from the copy so attached.~~

17 2. That the affiant was unable to obtain a consultation
18 required by paragraph 1 because a statute of limitations
19 would impair the action and the consultation required could
20 not be obtained before the expiration of the statute of
21 limitations. If an affidavit is executed pursuant to this
22 paragraph, the affidavit ~~certificate~~ and written report
23 required by paragraph 1 shall be filed within 90 days after
24 the filing of the complaint. No additional 90-day
25 extensions pursuant to this paragraph 2 shall be granted,
26 except where there has been a withdrawal of the plaintiff's
27 counsel. The defendant shall be excused from answering or
28 otherwise pleading until 30 days after being served with an
29 affidavit and a report ~~a certificate~~ required by paragraph
30 1.

31 3. That a request has been made by the plaintiff or his
32 attorney for examination and copying of records pursuant to
33 Part 20 of Article VIII of this Code and the party required
34 to comply under those Sections has failed to produce such
35 records within 60 days of the receipt of the request. If an
36 affidavit is executed pursuant to this paragraph, the

1 affidavit ~~certificate~~ and written report required by
2 paragraph 1 shall be filed within 90 days following receipt
3 of the requested records. All defendants except those whose
4 failure to comply with Part 20 of Article VIII of this Code
5 is the basis for an affidavit under this paragraph shall be
6 excused from answering or otherwise pleading until 30 days
7 after being served with the affidavit and report
8 ~~certificate~~ required by paragraph 1.

9 (b) Where an affidavit ~~a certificate~~ and written report are
10 required pursuant to this Section a separate affidavit
11 ~~certificate~~ and written report shall be filed as to each
12 defendant who has been named in the complaint and shall be
13 filed as to each defendant named at a later time.

14 (c) Where the plaintiff intends to rely on the doctrine of
15 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
16 the affidavit ~~certificate~~ and written report must state that,
17 in the opinion of the reviewing health professional, negligence
18 has occurred in the course of medical treatment. The affiant
19 shall certify upon filing of the complaint that he is relying
20 on the doctrine of "res ipsa loquitur".

21 (d) When the attorney intends to rely on the doctrine of
22 failure to inform of the consequences of the procedure, the
23 attorney shall certify upon the filing of the complaint that
24 the reviewing health professional has, after reviewing the
25 medical record and other relevant materials involved in the
26 particular action, concluded that a reasonable health
27 professional would have informed the patient of the
28 consequences of the procedure.

29 (e) Allegations and denials in the affidavit, made without
30 reasonable cause and found to be untrue, shall subject the
31 party pleading them or his attorney, or both, to the payment of
32 reasonable expenses, actually incurred by the other party by
33 reason of the untrue pleading, together with reasonable
34 attorneys' fees to be summarily taxed by the court upon motion
35 made within 30 days of the judgment or dismissal. In no event
36 shall the award for attorneys' fees and expenses exceed those

1 actually paid by the moving party, including the insurer, if
2 any. In proceedings under this paragraph (e), the moving party
3 shall have the right to depose and examine any and all
4 reviewing health professionals who prepared reports used in
5 conjunction with an affidavit required by this Section.

6 (f) A reviewing health professional who in good faith
7 prepares a report used in conjunction with an affidavit
8 required by this Section shall have civil immunity from
9 liability which otherwise might result from the preparation of
10 such report.

11 (g) The failure of the plaintiff to file an affidavit and
12 report in compliance with ~~to file a certificate required by~~
13 this Section shall be grounds for dismissal under Section
14 2-619.

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

18 (i) This amendatory Act of 1997 does not apply to or
19 affect any actions pending at the time of its effective date,
20 but applies to cases filed on or after its effective date.

21 (j) The changes to this Section made by this amendatory Act
22 of the 94th General Assembly apply to causes of action accruing
23 on or after its effective date.

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

25 (735 ILCS 5/2-1105.01 new)

26 Sec. 2-1105.01. Personal assets protected in healing art
27 malpractice cases. In all cases, whether tort, contract, or
28 otherwise, in which the plaintiff seeks damages by reason of
29 healing art malpractice, a health care professional who
30 maintains at least a minimum of \$1,000,000 in professional
31 liability insurance coverage to cover a claim against him or
32 her is entitled to an exemption of all of his or her assets
33 from attachment, garnishment, or other form of forfeiture to
34 satisfy any judgment, decision, award, or verdict. Corporate
35 assets are subject to attachment for satisfaction of a

1 judgment. For the purposes of this Section, (i) "health care
2 professional" includes, without limitation, a physician,
3 advanced practice nurse, physician assistant, dentist,
4 podiatrist, and physical therapist and (ii) "asset" includes,
5 without limitation, any asset, property (real or personal),
6 interest, or other thing of value, of any kind or character
7 whatsoever that would otherwise be subject to immediate
8 execution to satisfy a judgment.

9 This Section shall not restrict, impair, or otherwise
10 affect the amount of damages that may be awarded to the
11 plaintiff or the amount of any judgment in favor of the
12 plaintiff. This Section shall not restrict, impair, or
13 otherwise affect the statutory and common law causes of action
14 a health care professional or the health care professional's
15 assignee has against the health care professional's insurer for
16 the insurer acting in bad faith or vexatiously and without
17 reasonable cause by failing to settle the action against the
18 health care professional within the health care professional's
19 insurance policy limits. The plaintiff shall be required to
20 prove all the elements of any such cause of action. This
21 Section shall not reduce or limit the damages that otherwise
22 would have been recoverable in any such action.

23 This Section applies to all causes of action pending on the
24 effective date of this amendatory Act of the 94th General
25 Assembly and to all causes of action filed on or after the
26 effective date of this amendatory Act of the 94th General
27 Assembly.

28 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

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

31 Sec. 2-1107.1. Jury instruction in tort actions.

32 (a) In all actions on account of bodily injury or death or
33 physical damage to property based on negligence, or product
34 liability based on strict tort liability, the court shall
35 instruct the jury in writing that the defendant shall be found

1 not liable if the jury finds that the contributory fault of the
2 plaintiff is more than 50% of the proximate cause of the injury
3 or damage for which recovery is sought.

4 (b) In all healing art malpractice actions, the court shall
5 instruct the jury in writing whether or not any award of
6 compensatory damages will be taxable under federal or State
7 income tax law.

8 (c) In all healing art malpractice actions, the court shall
9 instruct the jury in writing that punitive damages may not be
10 awarded in any form under Illinois law.

11 (d) The changes to this Section made by this amendatory Act
12 of the 94th General Assembly apply to causes of action filed on
13 or after its effective date.

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

15 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

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

18 Sec. 2-1109. Itemized verdicts.

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

1 ~~which will be incurred in the future.~~

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

5 "Economic loss" or "economic damages" means all damages
6 that are tangible, such as damages for past and future medical
7 expenses, loss of income or earnings, and other property loss.

8 "Non-economic loss" or "non-economic damages" means
9 damages that are intangible, including, but not limited to,
10 damages for pain and suffering, disability, disfigurement, and
11 loss of society.

12 "Compensatory damages" or "actual damages" are the sum of
13 economic and non-economic damages.

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

16 (d) The changes to this Section made by this amendatory Act
17 of the 94th General Assembly apply to causes of action filed on
18 or after its effective date.

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

20 (735 ILCS 5/2-1114) (from Ch. 110, par. 2-1114)

21 Sec. 2-1114. Contingent fees for attorneys in medical
22 malpractice actions.

23 (a) In all medical malpractice actions the total contingent
24 fee for plaintiff's attorney or attorneys shall not exceed the
25 following amounts:

26 33 1/3% of the first \$150,000 of the sum recovered;

27 25% of the next \$850,000 of the sum recovered; and

28 20% of any amount recovered over \$1,000,000 of the sum
29 recovered.

30 (b) For purposes of determining any lump sum contingent
31 fee, any future damages recoverable by the plaintiff in
32 periodic installments shall be reduced to a lump sum value.

33 (c) The court may review contingent fee agreements for
34 fairness. In special circumstances, where an attorney performs
35 extraordinary services involving more than usual participation

1 in time and effort the attorney may apply to the court for
2 approval of additional compensation. Any application for
3 additional compensation and the court's decision on additional
4 compensation shall be made part of the record.

5 (d) As used in this Section, "contingent fee basis"
6 includes any fee arrangement under which the compensation is to
7 be determined in whole or in part on the result obtained.

8 (e) The changes to this Section made by this amendatory Act
9 of the 94th General Assembly apply to causes of action filed on
10 or after its effective date.

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

12 (735 ILCS 5/2-1701) (from Ch. 110, par. 2-1701)

13 Sec. 2-1701. Application. ~~In Subject to the provisions of~~
14 ~~Section 2-1705, in~~ all medical malpractice actions the
15 provisions of this Act shall be applicable.

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

17 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

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

20 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
21 Part, "economic loss" and "non-economic loss" have the same
22 meanings as in subsection (b) of Section 2-1109. †

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

25 ~~(b) "Non economic loss" means loss of consortium and all~~
26 ~~nonpecuniary harm for which damages are recoverable,~~
27 ~~including, without limitation, damages for pain and suffering,~~
28 ~~inconvenience, disfigurement, and physical impairment.~~

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

30 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

31 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
32 ~~Action.~~ As used in this Code Part, "healing art medical
33 malpractice action" means any action, whether in tort, contract

1 or otherwise, in which the plaintiff seeks damages for injuries
2 or death by reason of medical, hospital, or other healing art
3 malpractice including but not limited to medical, hospital,
4 nursing, dental, or podiatric malpractice. The term "healing
5 art" shall not include care and treatment by spiritual means
6 through prayer in accord with the tenets and practices of a
7 recognized church or religious denomination.

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

9 (735 ILCS 5/2-1704.5 new)

10 Sec. 2-1704.5. Guaranteed payment of future medical
11 expenses.

12 (a) Either party in a medical malpractice action may elect
13 to have the payment of the plaintiff's future medical expenses
14 and costs of life care determined under this Section. The
15 election must be made not less than 60 days before commencement
16 of a trial involving issues of damages for such future medical
17 and life care. If found liable for damages for a plaintiff's
18 future medical and life care, the defendant shall compensate
19 the plaintiff for such expenses and costs by purchasing an
20 annuity as described in this Section that will pay for these
21 costs and expenses for as long as the plaintiff needs medical
22 and life care.

23 (b) If a defendant in a medical malpractice action is found
24 liable for the plaintiff's future medical expenses and costs of
25 care, the trier of fact, in addition to other appropriate
26 findings, shall make the following findings based on evidence
27 presented at trial:

28 (1) the current year annual cost of any future medical,
29 custodial, or life care required by the plaintiff
30 (including the cost of medical treatment, equipment,
31 supplies and medication, home nursing care, and
32 institutional or facility care) as described in the
33 plaintiff's life care plan determined to be acceptable by
34 the trier of fact; and

35 (2) the annual composite rate of inflation that should

1 be applied to the costs specified in item (1).
2 Based upon evidence presented at trial, the trier of fact may
3 also vary the amount of future costs under this Section from
4 year to year to account for different annual expenditures,
5 including the immediate medical and life care needs of the
6 plaintiff. If the trier of fact determines that the plaintiff
7 will need future medical and life care for less than the
8 plaintiff's entire life, the trier of fact shall specify the
9 number of years such care will be needed, but in no event shall
10 the payments required under this Section be required for a
11 period in excess of the plaintiff's life.

12 (c) When an election is made to pay for future medical and
13 life care costs by purchasing an annuity, the circuit court
14 shall enter a judgment ordering that such future costs be paid
15 through the use of an annuity purchased by or on behalf of the
16 defendant from a company that has itself, or is irrevocably
17 supported financially by a company that has, at least 2 of the
18 following 4 ratings: "A+x" or higher from A.M. Best Company;
19 "AA-" or higher from Standard & Poor's; "Aa3" or higher from
20 Moody's; and "AA-" or higher from Fitch. The judgment shall
21 specify the recipient of the payments, the dollar amount of the
22 payments, the interval between payments, and the number of
23 payments or the period of time over which payments shall be
24 made if the trier of fact determines that such costs will be
25 incurred for less than the plaintiff's entire life. Such
26 payments shall only be subject to modification with leave of
27 court pursuant to subsection (d).

28 (d) A plaintiff receiving future payments by means of an
29 annuity under this Section may seek leave of court to assign or
30 otherwise transfer the right to receive such payments in
31 exchange for a negotiated lump sum value of the remaining
32 future payments or any portion of the remaining future payments
33 under the annuity to address an unanticipated financial
34 hardship under such terms as approved by the court.

35 (e) In determining contingent attorneys' fees under
36 Section 2-1114 of this Code, the sum recovered shall be

1 determined on the basis of the cost of the annuity purchased in
2 accordance with this Section.

3 (735 ILCS 5/2-1706.5 new)

4 Sec. 2-1706.5. Standards for economic and non-economic
5 damages.

6 (a) In any medical malpractice action in which economic and
7 non-economic damages may be awarded, the following standards
8 shall apply:

9 (1) In a case of an award against a hospital and its
10 personnel or hospital affiliates, as defined in Section
11 10.8 of the Hospital Licensing Act, the total amount of
12 non-economic damages shall not exceed \$500,000 awarded to
13 all plaintiffs in any civil action arising out of the care.

14 (2) In a case of an award against a physician and the
15 physician's business or corporate entity and personnel or
16 health care professional, the total amount of non-economic
17 damages shall not exceed \$250,000 awarded to all plaintiffs
18 in any civil action arising out of the care.

19 (3) In awarding damages in a medical malpractice case,
20 the finder of fact shall render verdicts with a specific
21 award of damages for economic loss, if any, and a specific
22 award of damages for non-economic loss, if any.

23 (b) In any medical malpractice action where an individual
24 plaintiff earns less than the annual average weekly wage, as
25 determined by the Workers' Compensation Commission, at the time
26 the action is filed, any award may include an amount equal to
27 the wage the individual plaintiff earns or the annual average
28 weekly wage.

29 (c) Any party in a medical malpractice case may introduce
30 annuity evidence to inform the fact finder about the time value
31 of an award and its ability to cover the plaintiff's damages
32 over time.

33 (d) If any provision of this Section or its application to
34 any person or circumstance is held invalid, the invalidity of
35 that provision or application does not affect other provisions

1 or applications of this Section.

2 (735 ILCS 5/2-1721 new)

3 Sec. 2-1721. Hospitals; apparent or ostensible agency.

4 (a) In addition to any other defense, a hospital shall not
5 be liable for the conduct of a non-employee member of its
6 medical staff under any claim based upon apparent or ostensible
7 agency as a matter of law, provided that:

8 (1) the plaintiff came to the hospital's emergency
9 department for care, where the hospital posted a sign or
10 provided the plaintiff with a document stating the
11 following: "Some of the physicians who may provide care or
12 consultation for you at this hospital are NOT employees of
13 the hospital, and while they have qualified to practice at
14 the hospital, their treatment decisions are their own
15 independent judgments. Do not assume your physician is a
16 hospital employee. If you have any questions about this,
17 please ask your physician or a hospital administrator or
18 representative before receiving treatment."; or

19 (2) the patient was unconscious or unaware of his or
20 her surroundings when brought to the hospital and the
21 patient's legal representative was not present at the time
22 to be informed of the non-employee status of the treating
23 physician.

24 (b) In any other action against a hospital arising out of
25 the provision of health care in which the plaintiff seeks
26 damages for any loss, bodily injury, or death in a claim based
27 upon apparent or ostensible agency, the plaintiff must allege
28 and prove the following:

29 (1) that the hospital, through its own specific
30 advertising or other public representations, caused the
31 plaintiff to reasonably believe that the physicians
32 treating the plaintiff at the hospital were the hospital's
33 agents or employees;

34 (2) that the plaintiff selected the hospital for
35 treatment primarily because of the hospital's public

1 representations described in item (1); and

2 (3) that a reasonable plaintiff would have selected a
3 different hospital for treatment if the plaintiff knew that
4 the treating physicians at the hospital might not be the
5 hospital's agents or employees.

6 (c) A plaintiff basing a claim upon apparent or ostensible
7 agency must allege facts describing the specific advertising or
8 other public representations that gave rise to a reasonable
9 belief that the hospital employs its treating physicians. The
10 plaintiff must also allege why the employment status of the
11 hospital's physicians played a primary role in the plaintiff's
12 selection of the hospital and why the plaintiff would have
13 selected a different hospital if the plaintiff knew that the
14 treating physicians might not be hospital agents or employees.

15 (d) As used in this Section, "public representations" does
16 not include granting a physician medical staff membership or
17 clinical privileges or making any statements about the granting
18 of such membership or privileges.

19 (e) Nothing in this Section precludes any other defense to
20 a claim of apparent or ostensible agency.

21 (f) The changes to this Section made by this amendatory Act
22 of the 94th General Assembly apply to causes of action accruing
23 on or after its effective date.

24 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

26 (a) The providing of, or payment for, medical, surgical,
27 hospital, or rehabilitation services, facilities, or equipment
28 by or on behalf of any person, or the offer to provide, or pay
29 for, any one or more of the foregoing, shall not be construed
30 as an admission of any liability by such person or persons.
31 Testimony, writings, records, reports or information with
32 respect to the foregoing shall not be admissible in evidence as
33 an admission of any liability in any action of any kind in any
34 court or before any commission, administrative agency, or other
35 tribunal in this State, except at the instance of the person or

1 persons so making any such provision, payment or offer.

2 (b) Any expression of grief, apology, or explanation
3 provided by a health care provider, including, but not limited
4 to, a statement that the health care provider is "sorry" for
5 the outcome to a patient, the patient's family, or the
6 patient's legal representative about an inadequate or
7 unanticipated treatment or care outcome that is provided within
8 72 hours of when the provider knew or should have known of the
9 potential cause of such outcome shall not be admissible as
10 evidence in any action of any kind in any court or before any
11 tribunal, board, agency, or person. The disclosure of any such
12 information, whether proper, or improper, shall not waive or
13 have any effect upon its confidentiality or inadmissibility. As
14 used in this Section, a "health care provider" is any hospital,
15 nursing home or other facility, or employee or agent thereof, a
16 physician, or other licensed health care professional. Nothing
17 in this Section precludes the discovery or admissibility of any
18 other facts regarding the patient's treatment or outcome as
19 otherwise permitted by law.

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

21 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

24 Sec. 8-2501. Expert Witness Standards. In any case in which
25 the standard of care applicable to ~~given by~~ a medical
26 professional ~~profession~~ is at issue, the court shall apply the
27 following standards to determine if a witness qualifies as an
28 expert witness and can testify on the issue of the appropriate
29 standard of care.

30 (a) Whether the witness is board certified or board
31 eligible, or has completed a residency, in the same or
32 substantially similar medical specialties as the defendant and
33 is otherwise qualified by significant experience with the
34 standard of care, methods, procedures, and treatments relevant
35 to the allegations against the defendant ~~Relationship of the~~

1 ~~medical specialties of the witness to the medical problem or~~
2 ~~problems and the type of treatment administered in the case;~~

3 (b) Whether the witness has devoted a majority ~~substantial~~
4 ~~portion~~ of his or her work time to the practice of medicine,
5 teaching or University based research in relation to the
6 medical care and type of treatment at issue which gave rise to
7 the medical problem of which the plaintiff complains;

8 (c) whether the witness is licensed in the same profession
9 with the same class of license as the defendant if the
10 defendant is an individual; and

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

14 An expert shall provide evidence of active practice,
15 teaching, or engaging in university-based research. If
16 retired, an expert must provide evidence of attendance and
17 completion of continuing education courses for 3 years previous
18 to giving testimony. An expert who has not actively practiced,
19 taught, or been engaged in university-based research, or any
20 combination thereof, during the preceding 5 years may not be
21 qualified as an expert witness.

22 The changes to this Section made by this amendatory Act of
23 the 94th General Assembly apply to causes of action filed on or
24 after its effective date.

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

26 (735 ILCS 5/2-1705 rep.) (from Ch. 110, par. 2-1705)

27 (735 ILCS 5/2-1706 rep.) (from Ch. 110, par. 2-1706)

28 (735 ILCS 5/2-1707 rep.) (from Ch. 110, par. 2-1707)

29 (735 ILCS 5/2-1708 rep.) (from Ch. 110, par. 2-1708)

30 (735 ILCS 5/2-1709 rep.) (from Ch. 110, par. 2-1709)

31 (735 ILCS 5/2-1710 rep.) (from Ch. 110, par. 2-1710)

32 (735 ILCS 5/2-1711 rep.) (from Ch. 110, par. 2-1711)

33 (735 ILCS 5/2-1712 rep.) (from Ch. 110, par. 2-1712)

34 (735 ILCS 5/2-1713 rep.) (from Ch. 110, par. 2-1713)

35 (735 ILCS 5/2-1714 rep.) (from Ch. 110, par. 2-1714)

1 (735 ILCS 5/2-1715 rep.) (from Ch. 110, par. 2-1715)

2 (735 ILCS 5/2-1716 rep.) (from Ch. 110, par. 2-1716)

3 (735 ILCS 5/2-1717 rep.) (from Ch. 110, par. 2-1717)

4 (735 ILCS 5/2-1718 rep.) (from Ch. 110, par. 2-1718)

5 (735 ILCS 5/2-1719 rep.) (from Ch. 110, par. 2-1719)

6 Section 415. The Code of Civil Procedure is amended by
7 repealing Sections 2-1705, 2-1706, 2-1707, 2-1708, 2-1709,
8 2-1710, 2-1711, 2-1712, 2-1713, 2-1714, 2-1715, 2-1716,
9 2-1717, 2-1718, and 2-1719.

10 Section 420. The Good Samaritan Act is amended by changing
11 Sections 25 and 30 as follows:

12 (745 ILCS 49/25)

13 Sec. 25. Physicians; exemption from civil liability for
14 emergency care. Any person licensed under the Medical Practice
15 Act of 1987 or any person licensed to practice the treatment of
16 human ailments in any other state or territory of the United
17 States who, in good faith, provides emergency care without fee
18 to a person, shall not, as a result of his or her acts or
19 omissions, except willful or wanton misconduct on the part of
20 the person, in providing the care, be liable for civil damages.
21 This good faith immunity applies to physicians licensed to
22 practice medicine in all its branches, including retired
23 physicians providing care without fee to a person pursuant to
24 an emergency department on call list.

25 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

26 (745 ILCS 49/30)

27 Sec. 30. Free medical clinic; exemption from civil
28 liability for services performed without compensation.

29 (a) A person licensed under the Medical Practice Act of
30 1987, a person licensed to practice the treatment of human
31 ailments in any other state or territory of the United States,
32 or a health care professional, including but not limited to an
33 advanced practice nurse, retired physician, physician

1 assistant, nurse, pharmacist, physical therapist, podiatrist,
2 or social worker licensed in this State or any other state or
3 territory of the United States, who, in good faith, provides
4 medical treatment, diagnosis, or advice as a part of the
5 services of an established free medical clinic providing care,
6 including but not limited to home visits, without charge to
7 ~~medically indigent~~ patients which is limited to care that does
8 not require the services of a licensed hospital or ambulatory
9 surgical treatment center and who receives no fee or
10 compensation from that source shall not be liable for civil
11 damages as a result of his or her acts or omissions in
12 providing that medical treatment, except for willful or wanton
13 misconduct.

14 (b) For purposes of this Section, a "free medical clinic"
15 is an organized community based program providing medical care
16 without charge to individuals ~~unable to pay for it~~, at which
17 the care provided does not include ~~the use of general~~
18 ~~anesthesia or require~~ an overnight stay in a health-care
19 facility.

20 (c) The provisions of subsection (a) of this Section do not
21 apply to a particular case unless the free medical clinic has
22 posted in a conspicuous place on its premises an explanation of
23 the exemption from civil liability provided herein.

24 (d) The immunity from civil damages provided under
25 subsection (a) also applies to physicians, retired physicians,
26 hospitals, and other health care providers that provide further
27 medical treatment, diagnosis, or advice, including but not
28 limited to hospitalization, office visits, and home visits, to
29 a patient upon referral from an established free medical clinic
30 without fee or compensation.

31 (d-5) A free medical clinic may receive reimbursement from
32 the Illinois Department of Public Aid, provided any
33 reimbursements shall be used only to pay overhead expenses of
34 operating the free medical clinic and may not be used, in whole
35 or in part, to provide a fee or other compensation to any
36 person licensed under the Medical Practice Act of 1987 or any

1 other health care professional who is receiving an exemption
2 under this Section. Any health care professional receiving an
3 exemption under this Section may not receive any fee or other
4 compensation in connection with any services provided to, or
5 any ownership interest in, the clinic. Medical care shall not
6 include an overnight stay in a health care facility.

7 (e) Nothing in this Section prohibits a free medical clinic
8 from accepting voluntary contributions for medical services
9 provided to a patient who has acknowledged his or her ability
10 and willingness to pay a portion of the value of the medical
11 services provided.

12 (f) Any voluntary contribution collected for providing
13 care at a free medical clinic shall be used only to pay
14 overhead expenses of operating the clinic. No portion of any
15 moneys collected shall be used to provide a fee or other
16 compensation to any person licensed under Medical Practice Act
17 of 1987.

18 (g) The changes to this Section made by this amendatory Act
19 of the 94th General Assembly apply to causes of action accruing
20 on or after its effective date.

21 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

22 ARTICLE 9

23 Section 995. Liberal construction; inseverability.

24 (a) This Act, being necessary for the welfare of the State
25 and its inhabitants, shall be liberally construed to effect its
26 purposes.

27 (b) The provisions of this Act are mutually dependent and
28 inseverable. If any provision is held invalid other than as
29 applied to a particular person or circumstance, then this
30 entire Act is invalid.

31 Section 999. Effective date. This Act takes effect upon
32 becoming law.

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