



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1453

Introduced 02/10/05, by Rep. Randall M. Hultgren - Patricia R. Bellock - Dan Reitz - Brandon W. Phelps - David Reis

SYNOPSIS AS INTRODUCED:

New Act

225 ILCS 60/22

from Ch. 111, par. 4400-22

225 ILCS 60/23

from Ch. 111, par. 4400-23

Creates the Woman's Right to Know Act and amends the Medical Practice Act of 1987. Provides that an abortion shall not be performed or induced unless the woman has given her voluntary and informed consent, and states guidelines for determining whether a woman's consent is voluntary and informed. Requires the Department of Public Health to publish printed materials and an informational video concerning certain prenatal services. Requires a physician to inform a woman of the existence of a medical emergency that necessitates an immediate abortion to avert her death or serious injury. Effective 120 days after becoming law.

LRB094 04183 DRJ 36190 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT in relation to health.

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

4 Section 1. Short title. This Act may be cited as the
5 Woman's Right to Know Act.

6 Section 5. Legislative findings and intent.

7 (a) The General Assembly of the State of Illinois finds
8 that:

9 (1) Many women now seek or are encouraged to undergo
10 elective abortions without full knowledge of the medical
11 and psychological risks of abortion, development of the
12 unborn child, or alternatives to abortion. An abortion
13 decision is often made under stressful circumstances.

14 (2) The knowledgeable exercise of a woman's decision to
15 have an elective abortion depends on the extent to which
16 the woman receives sufficient information to make a
17 voluntary and informed choice between 2 alternatives of
18 great consequence: carrying a child to birth or undergoing
19 an abortion.

20 (3) The U.S. Supreme Court has stated: "In attempting
21 to ensure that a woman apprehends the full consequences of
22 her decision, the State furthers the legitimate purpose of
23 reducing the risk that a woman may elect an abortion, only
24 to discover later, with devastating psychological
25 consequences, that her decision was not fully informed."
26 (Planned Parenthood of Southeastern Pennsylvania v. Casey,
27 112 U.S. 2791, 2823 (1992)).

28 (4) The decision to abort "is an important, and often a
29 stressful one, and it is desirable and imperative that it
30 be made with full knowledge of its nature and
31 consequences." (Planned Parenthood v. Danforth, 428 U.S.
32 52, 67 (1976)).

1 (5) It is essential to the psychological and physical
2 well-being of a woman considering an elective abortion that
3 she receive complete and accurate information on all
4 options available to her in dealing with her pregnancy.

5 (6) Women who seek elective abortions at abortion
6 clinics do not have a prior patient-physician relationship
7 with the physician who is to perform or induce the
8 abortion, normally do not return to the facility for
9 post-operative care, and normally do not continue a
10 patient-physician relationship with the physician who
11 performed or induced the abortion. In most instances, the
12 woman's only actual contact with the physician occurs
13 simultaneously with the abortion procedure, with little
14 opportunity to receive personal counseling by the
15 physician concerning her decision. Because of this,
16 certain safeguards are necessary to protect a woman's right
17 to know.

18 (7) A reasonable waiting period is critical to ensure
19 that a woman has the fullest opportunity to give her
20 voluntary and informed consent before she elects to undergo
21 an abortion.

22 (b) Based on the findings in subsection (a), it is the
23 intent of the legislature in enacting this Act to further the
24 important and compelling State interests in all of the
25 following:

26 (1) Protecting the life and health of the woman subject
27 to an elective abortion and, to the extent constitutionally
28 permissible, the life of her unborn child.

29 (2) Fostering the development of standards of
30 professional conduct in the practice of abortion.

31 (3) Ensuring that prior to the performance or
32 inducement of an elective abortion, the woman considering
33 an elective abortion receives personal counseling by the
34 physician and is given a full range of information
35 regarding her pregnancy, her unborn child, the abortion,
36 the medical and psychological risks of abortion, and

1 available alternatives to the abortion.

2 (4) Reducing the risk that a woman may elect an
3 abortion, only to discover later, with devastating
4 psychological consequences, that her decision was not
5 fully informed. *Planned Parenthood v. Casey*, 112 S. Ct.
6 2971, 2823 (1992).

7 (5) Ensuring that a woman who decides to have an
8 elective abortion gives her voluntary and informed consent
9 to the abortion procedure.

10 Section 10. Definitions. As used in this Act:

11 "Abortion" means the use of any instrument, medicine, drug,
12 or other substance or device to terminate the pregnancy of a
13 woman known to be pregnant with an intention other than to
14 increase the probability of a live birth, to preserve the life
15 or health of a child after birth, or to remove a dead fetus.

16 "Department" means the Department of Public Health of the
17 State of Illinois.

18 "Medical emergency" means any condition that, on the basis
19 of the physician's reasonable medical judgment, so complicates
20 the medical condition of a pregnant female as to necessitate
21 the immediate abortion of her pregnancy to avert her death or
22 for which a delay will create serious risk of substantial and
23 irreversible impairment of a major bodily function.

24 "Probable gestational age of the unborn child" means the
25 number of weeks that have elapsed from the probable time of
26 fertilization of a woman's ovum, based on the information
27 provided by the woman as to the time of her last menstrual
28 period, her medical history, a physical examination performed
29 by the physician who is to perform or induce the abortion or by
30 any other physician, and any appropriate laboratory tests
31 performed on her.

32 "Qualified person assisting the physician" means a
33 licensed social worker, a registered nurse, or a physician
34 assistant to whom a physician who is to perform or induce an
35 abortion has delegated the responsibility, as the physician's

1 agent, for providing the information required under Section 15.

2 "Referring physician" means a physician, as defined in this
3 Act, who is other than the physician who is to perform the
4 abortion.

5 "Physician" means any person licensed to practice medicine
6 in all its branches under the Medical Practice Act of 1987.

7 "Viability" means the state of fetal development when, in
8 the judgment of the physician based on the particular facts of
9 the case before him or her and in light of the most advanced
10 medical technology and information available to him or her,
11 there is a reasonable likelihood of sustained survival of the
12 unborn child outside the body of his or her mother, with or
13 without artificial support.

14 Section 15. Informed consent requirement.

15 (a) An abortion shall not be performed or induced unless
16 the woman upon whom the abortion is to be performed or induced
17 has given her voluntary and informed consent.

18 (b) Consent under this Section to an abortion is voluntary
19 only if the consent is given freely and without coercion by any
20 person.

21 (c) Except in the case of a medical emergency, consent to
22 an abortion is voluntary and informed if and only if:

23 (1) At least 24 hours before the abortion is to be
24 performed or induced, the physician who is to perform or
25 induce the abortion or the referring physician has, in
26 person, orally informed the woman of all of the following:

27 (A) The name of the physician who will perform the
28 abortion.

29 (B) Whether, according to the reasonable medical
30 judgment of the physician, the woman is pregnant.

31 (C) The probable gestational age of the unborn
32 child at the time that the information is provided.

33 (D) The particular medical risks, if any,
34 associated with the woman's pregnancy.

35 (E) The probable anatomical and physiological

1 characteristics of the woman's unborn child at the time
2 the information is given.

3 (F) The details of the medical or surgical method
4 that would be used in performing or inducing the
5 abortion.

6 (G) The medical risks associated with the
7 particular abortion procedure that would be used,
8 including but not limited to the medical risks of
9 infection, psychological trauma, hemorrhage,
10 endometritis, perforated uterus, incomplete abortion,
11 failed abortion, danger to subsequent pregnancies, and
12 infertility.

13 (H) The recommended general medical instructions
14 for the woman to follow after an abortion to enhance
15 her safe recovery and the name and telephone number of
16 a physician to call if complications arise after the
17 abortion.

18 (I) If, in the reasonable medical judgment of the
19 physician, the woman's unborn child has reached
20 viability, that the physician who is to perform or
21 induce the abortion or a second physician is required
22 to take all reasonable steps necessary to maintain the
23 life and health of the child.

24 (J) Any other information that a reasonable
25 patient would consider material and relevant to a
26 decision of whether to carry a child to birth or to
27 undergo an abortion.

28 (K) That the woman may withdraw her consent to have
29 an abortion at any time before the abortion is
30 performed or induced.

31 (L) That, except as provided in Section 25, the
32 woman is not required to pay any amount for performance
33 or inducement of the abortion until at least 24 hours
34 have elapsed after the requirements of this Section are
35 met.

36 (2) Except as provided in Section 25, at least 24 hours

1 before the abortion is to be performed or induced, the
2 physician who is to perform or induce the abortion, a
3 qualified person assisting the physician, or another
4 physician has, in person, orally informed the woman of all
5 of the following:

6 (A) Medical assistance benefits may be available
7 for prenatal care, childbirth, and neonatal care, and
8 that more detailed information on the availability of
9 such assistance is contained in the printed materials
10 given to her and informational video available to her
11 and described in Section 20.

12 (B) That the printed materials and informational
13 video described in Section 20 describe the unborn child
14 and list agencies that offer alternatives to abortion.

15 (C) That the father of the unborn child is liable
16 for assistance in the support of the woman's child, if
17 born, even if the father has offered to pay for the
18 abortion. In the case of rape or incest, this
19 information may be omitted.

20 (D) The probable gestational age of the unborn
21 child at the time the abortion is to be performed, and,
22 if the unborn child is viable or has reached the
23 gestational age of 24 weeks, that (i) the unborn child
24 may be able to survive outside the womb; (ii) the woman
25 has the right to request the physician to use the
26 method of abortion that is most likely to preserve the
27 life of the unborn child; and (iii) if the unborn child
28 is born alive, the attending physician has the legal
29 obligation to take all reasonable steps necessary to
30 maintain the life and health of the child.

31 (E) That the woman has the right to receive and
32 review the printed materials and informational video
33 described in Section 20.

34 (F) That the physician or qualified person
35 assisting the physician must (i) physically give the
36 materials to the woman and must, in person, orally

1 inform her that the materials are free of charge, have
2 been provided by the State, and describe the unborn
3 child and list agencies that offer alternatives to
4 abortion and that the physician or other person will
5 provide her with the current updated copies of the
6 printed materials free of charge.

7 (3) The information that is required under
8 subdivisions (c)(1) and (c)(2) is provided to the woman in
9 an individual setting that protects her privacy, maintains
10 the confidentiality of her decision, and ensures that the
11 information she receives focuses on her individual
12 circumstances. This paragraph (3) may not be construed to
13 prevent the woman from having a family member or legal
14 guardian, or any other person of her choice, present during
15 her private counseling.

16 (4) Whoever provides the information that is required
17 under subdivision (c)(1) or (c)(2), or both, provides
18 adequate opportunity for the woman to ask questions,
19 including questions concerning the pregnancy, her unborn
20 child, abortion, and adoption, and provides the
21 information that is requested or indicates to the woman
22 where she can obtain the information.

23 (4.5) Whoever provides the information that is
24 required under subdivision (c)(1) or (c)(2), or both,
25 identifies himself or herself by name and position.

26 (5) The woman certifies in writing on a form that the
27 Department shall provide, prior to performance or
28 inducement of the abortion, that the information that is
29 required under subdivisions (c)(1) and (c)(2) has been
30 provided to her in the manner specified in subdivision
31 (c)(3), that she has been offered the information described
32 in Section 20, and that all of her questions, as specified
33 under subdivision (c)(4) have been answered in a
34 satisfactory manner. The physician who is to perform or
35 induce the abortion or the qualified person assisting the
36 physician shall write on the certification form the name of

1 the physician who is to perform or induce the abortion. The
2 physician or qualified person assisting the physician
3 shall indicate on the certification form who provided the
4 information to the woman and when it was provided.

5 (6) Prior to the performance or the inducement of the
6 abortion, the physician who is to perform or induce the
7 abortion or the qualified person assisting the physician
8 receives the written certification that is required under
9 subdivision (c)(5). The physician or qualified person
10 assisting the physician shall place the certification in
11 the woman's medical record and shall provide the woman with
12 a copy of the certification.

13 (7) If the woman considering an abortion has been
14 adjudicated incompetent, the requirements to provide
15 information to the woman under Section 15 apply to also
16 require provision of the information to the person
17 appointed as the woman's guardian.

18 Section 20. Publication of materials.

19 (a) Within 120 days after this Act becomes law, the
20 Department shall cause to be published, in English, Spanish,
21 and other languages spoken by a significant number of State
22 residents, as determined by the Department, printed materials
23 and an informational video. The printed materials shall be in
24 an easily comprehensible format and printed in type of not less
25 than 12-point size. The Department shall update on an annual
26 basis the following materials:

27 (1) Geographically indexed materials that are designed
28 to inform a woman about public and private agencies,
29 including adoption agencies, available to assist her
30 through pregnancy, upon childbirth, and while the child is
31 dependent. The materials shall include a comprehensive
32 list of the agencies available, a description of the
33 services that they offer, and a description of the manner
34 in which they may be contacted, including telephone numbers
35 and addresses. The materials shall include a toll-free,

1 24-hour telephone number that may be called to obtain an
2 oral listing of available agencies and services in the
3 locality of the caller and a description of the services
4 that the agencies offer and the manner in which they may be
5 contacted. The materials shall provide information on the
6 availability of governmentally funded programs that serve
7 pregnant women and children. Services identified for the
8 woman shall include temporary assistance for needy
9 families, medical assistance for pregnant women and
10 children, the availability of family or medical leave,
11 child care services, child support laws, and programs and
12 the credit for expenses for household and dependent care
13 and services necessary for gainful employment. The
14 materials shall state that it is unlawful to perform an
15 abortion for which consent has been coerced, that the
16 father of a child is liable for assistance in the support
17 of the child, even in instances in which the father has
18 offered to pay for an abortion, and that adoptive parents
19 may pay the costs of prenatal care, childbirth, and
20 neonatal care. The material shall include the following
21 statement: "There are many public and private agencies
22 willing and able to help you to carry your child to term,
23 and to assist you and your child after your child is born,
24 whether you choose to keep your child or to place her or
25 him for adoption. The State of Illinois strongly urges you
26 to contact one or more of these agencies before making a
27 final decision about abortion. The law requires that your
28 physician or his or her agent give you the opportunity to
29 call agencies like these before you undergo an abortion."
30 The materials shall include information, for a woman whose
31 pregnancy is the result of sexual assault or incest, on
32 legal protections available to the woman and her child if
33 she wishes to oppose establishment of paternity or to
34 terminate the father's parental rights.

35 (2) Materials, including photographs, pictures, or
36 drawings, that are designed to inform the woman of the

1 probable anatomical and physiological characteristics of
2 the unborn child at 2-week gestational increments for the
3 first 16 weeks of her pregnancy and at 4-week gestational
4 increments from the 17th week of the pregnancy to full
5 term, including any relevant information regarding the
6 time at which the unborn child could possibly be viable.
7 The pictures or drawings must contain the dimensions of the
8 unborn child and must be realistic and appropriate for the
9 stage of pregnancy depicted. The materials shall be
10 objective, nonjudgmental, and designed to convey only
11 accurate scientific information about the unborn child at
12 the various gestational ages, including appearance,
13 mobility, brain and heart activity and function, tactile
14 sensitivity, and the presence of internal organs and
15 external members. The materials shall also contain
16 objective, accurate information describing the methods of
17 abortion procedures commonly employed, the medical and
18 psychological risks commonly associated with each such
19 procedure, including the risks of infection, psychological
20 trauma, hemorrhage, endometritis, perforated uterus,
21 incomplete abortion, failed abortion, danger to subsequent
22 pregnancies, and infertility, and the medical risks
23 commonly associated with carrying a child to birth.

24 (3) A certification form for use under subdivision
25 (c)(5) of Section 15 that lists, in a check-off format, all
26 of the information required to be provided under that
27 Section.

28 The Department shall produce a standardized videotape that
29 may be used statewide, presenting the information described in
30 subdivisions (a)(1) and (a)(2) in accordance with the
31 requirements of those subdivisions. In preparing the video, the
32 Department may summarize and make reference to the printed
33 comprehensive list of geographically indexed names and
34 services described in subdivision (a)(1). The videotape shall
35 show, in addition to the information described in subdivisions
36 (a)(1) and (a)(2), an ultrasound of the heartbeat of an unborn

1 child at 4 to 5 weeks gestational age, at 6 to 8 weeks
2 gestational age, and at each month thereafter, until viability.
3 That information shall be presented in an objective, unbiased
4 manner designed to convey only accurate scientific
5 information.

6 The printed materials and videotape required under this
7 Section shall be available at no cost from the Department, upon
8 request and in appropriate number, to any physician, medical
9 facility, or hospital.

10 (b) A physician who intends to perform or induce an
11 abortion or a referring physician, who reasonably believes that
12 he or she might have a patient for whom the information in
13 subsection (a) is required to be given, shall request a
14 reasonably adequate number of the materials that are described
15 in subsection (a) from the Department.

16 Section 25. Medical emergencies. If a medical emergency
17 exists, the physician who is to perform or induce the abortion
18 necessitated by the medical emergency shall inform the woman,
19 prior to the abortion if possible, of the medical indications
20 supporting the physician's reasonable medical judgment that an
21 immediate abortion is necessary to avert her death or that a
22 24-hour delay in performance or inducement of an abortion will
23 create a serious risk of substantial and irreversible
24 impairment of one or more of the woman's major bodily
25 functions. If possible, the physician shall obtain the woman's
26 written consent prior to the abortion. The physician shall
27 certify these medical indications in writing and place the
28 certification in the woman's medical record.

29 Section 30. Pregnancy as the result of sexual assault or
30 incest. A woman seeking an abortion may waive the 24-hour
31 period required under subdivision (c)(1) of Section 15, if the
32 woman alleges that the pregnancy is the result of sexual
33 assault.

1 Section 35. Violation; penalty. A physician's violation of
2 this Act is grounds for disciplinary action under the Medical
3 Practice Act of 1987.

4 Section 40. Common law rights. Nothing in this Act limits
5 the common law rights of a person that are not in conflict with
6 this Act.

7 Section 50. Construction. Nothing in this Act shall be
8 construed as creating or recognizing a right to abortion or as
9 making lawful an abortion that is otherwise unlawful.

10 Section 55. Severability. If any provision, word, phrase,
11 or clause of this Act or its application to any person or
12 circumstance is held invalid, the invalidity of that provision
13 or application does not affect the provisions, words, phrases,
14 clauses, or applications of the Act which can be given effect
15 without the invalid provision, word, phrase, clause, or
16 application, and to this end the provisions, words, phrases,
17 and clauses of this Act are declared to be severable.

18 Section 90. The Medical Practice Act of 1987 is amended by
19 changing Sections 22 and 23 as follows:

20 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

21 Sec. 22. Disciplinary action.

22 (A) The Department may revoke, suspend, place on
23 probationary status, or take any other disciplinary action as
24 the Department may deem proper with regard to the license or
25 visiting professor permit of any person issued under this Act
26 to practice medicine, or to treat human ailments without the
27 use of drugs and without operative surgery upon any of the
28 following grounds:

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

31 (a) a facility licensed pursuant to the Ambulatory

1 Surgical Treatment Center Act;

2 (b) an institution licensed under the Hospital
3 Licensing Act; or

4 (c) an ambulatory surgical treatment center or
5 hospitalization or care facility maintained by the
6 State or any agency thereof, where such department or
7 agency has authority under law to establish and enforce
8 standards for the ambulatory surgical treatment
9 centers, hospitalization, or care facilities under its
10 management and control; or

11 (d) ambulatory surgical treatment centers,
12 hospitalization or care facilities maintained by the
13 Federal Government; or

14 (e) ambulatory surgical treatment centers,
15 hospitalization or care facilities maintained by any
16 university or college established under the laws of
17 this State and supported principally by public funds
18 raised by taxation.

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

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

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

28 (5) Engaging in dishonorable, unethical or
29 unprofessional conduct of a character likely to deceive,
30 defraud or harm the public.

31 (6) Obtaining any fee by fraud, deceit, or
32 misrepresentation.

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

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

3 (9) Fraud or misrepresentation in applying for, or
4 procuring, a license under this Act or in connection with
5 applying for renewal of a license under this Act.

6 (10) Making a false or misleading statement regarding
7 their skill or the efficacy or value of the medicine,
8 treatment, or remedy prescribed by them at their direction
9 in the treatment of any disease or other condition of the
10 body or mind.

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

13 (12) Disciplinary action of another state or
14 jurisdiction against a license or other authorization to
15 practice as a medical doctor, doctor of osteopathy, doctor
16 of osteopathic medicine or doctor of chiropractic, a
17 certified copy of the record of the action taken by the
18 other state or jurisdiction being prima facie evidence
19 thereof.

20 (13) Violation of any provision of this Act or of the
21 Medical Practice Act prior to the repeal of that Act, or
22 violation of the rules, or a final administrative action of
23 the Director, after consideration of the recommendation of
24 the Disciplinary Board.

25 (14) Dividing with anyone other than physicians with
26 whom the licensee practices in a partnership, Professional
27 Association, limited liability company, or Medical or
28 Professional Corporation any fee, commission, rebate or
29 other form of compensation for any professional services
30 not actually and personally rendered. Nothing contained in
31 this subsection prohibits persons holding valid and
32 current licenses under this Act from practicing medicine in
33 partnership under a partnership agreement, including a
34 limited liability partnership, in a limited liability
35 company under the Limited Liability Company Act, in a
36 corporation authorized by the Medical Corporation Act, as

1 an association authorized by the Professional Association
2 Act, or in a corporation under the Professional Corporation
3 Act or from pooling, sharing, dividing or apportioning the
4 fees and monies received by them or by the partnership,
5 corporation or association in accordance with the
6 partnership agreement or the policies of the Board of
7 Directors of the corporation or association. Nothing
8 contained in this subsection prohibits 2 or more
9 corporations authorized by the Medical Corporation Act,
10 from forming a partnership or joint venture of such
11 corporations, and providing medical, surgical and
12 scientific research and knowledge by employees of these
13 corporations if such employees are licensed under this Act,
14 or from pooling, sharing, dividing, or apportioning the
15 fees and monies received by the partnership or joint
16 venture in accordance with the partnership or joint venture
17 agreement. Nothing contained in this subsection shall
18 abrogate the right of 2 or more persons, holding valid and
19 current licenses under this Act, to each receive adequate
20 compensation for concurrently rendering professional
21 services to a patient and divide a fee; provided, the
22 patient has full knowledge of the division, and, provided,
23 that the division is made in proportion to the services
24 performed and responsibility assumed by each.

25 (15) A finding by the Medical Disciplinary Board that
26 the registrant after having his or her license placed on
27 probationary status or subjected to conditions or
28 restrictions violated the terms of the probation or failed
29 to comply with such terms or conditions.

30 (16) Abandonment of a patient.

31 (17) Prescribing, selling, administering,
32 distributing, giving or self-administering any drug
33 classified as a controlled substance (designated product)
34 or narcotic for other than medically accepted therapeutic
35 purposes.

36 (18) Promotion of the sale of drugs, devices,

1 appliances or goods provided for a patient in such manner
2 as to exploit the patient for financial gain of the
3 physician.

4 (19) Offering, undertaking or agreeing to cure or treat
5 disease by a secret method, procedure, treatment or
6 medicine, or the treating, operating or prescribing for any
7 human condition by a method, means or procedure which the
8 licensee refuses to divulge upon demand of the Department.

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

12 (21) Wilfully making or filing false records or reports
13 in his or her practice as a physician, including, but not
14 limited to, false records to support claims against the
15 medical assistance program of the Department of Public Aid
16 under the Illinois Public Aid Code.

17 (22) Wilful omission to file or record, or wilfully
18 impeding the filing or recording, or inducing another
19 person to omit to file or record, medical reports as
20 required by law, or wilfully failing to report an instance
21 of suspected abuse or neglect as required by law.

22 (23) Being named as a perpetrator in an indicated
23 report by the Department of Children and Family Services
24 under the Abused and Neglected Child Reporting Act, and
25 upon proof by clear and convincing evidence that the
26 licensee has caused a child to be an abused child or
27 neglected child as defined in the Abused and Neglected
28 Child Reporting Act.

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

32 (25) Gross and wilful and continued overcharging for
33 professional services, including filing false statements
34 for collection of fees for which services are not rendered,
35 including, but not limited to, filing such false statements
36 for collection of monies for services not rendered from the

1 medical assistance program of the Department of Public Aid
2 under the Illinois Public Aid Code.

3 (26) A pattern of practice or other behavior which
4 demonstrates incapacity or incompetence to practice under
5 this Act.

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

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

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

15 (30) Wilfully or negligently violating the
16 confidentiality between physician and patient except as
17 required by law.

18 (31) The use of any false, fraudulent, or deceptive
19 statement in any document connected with practice under
20 this Act.

21 (32) Aiding and abetting an individual not licensed
22 under this Act in the practice of a profession licensed
23 under this Act.

24 (33) Violating state or federal laws or regulations
25 relating to controlled substances.

26 (34) Failure to report to the Department any adverse
27 final action taken against them by another licensing
28 jurisdiction (any other state or any territory of the
29 United States or any foreign state or country), by any peer
30 review body, by any health care institution, by any
31 professional society or association related to practice
32 under this Act, by any governmental agency, by any law
33 enforcement agency, or by any court for acts or conduct
34 similar to acts or conduct which would constitute grounds
35 for action as defined in this Section.

36 (35) Failure to report to the Department surrender of a

1 license or authorization to practice as a medical doctor, a
2 doctor of osteopathy, a doctor of osteopathic medicine, or
3 doctor of chiropractic in another state or jurisdiction, or
4 surrender of membership on any medical staff or in any
5 medical or professional association or society, while
6 under disciplinary investigation by any of those
7 authorities or bodies, for acts or conduct similar to acts
8 or conduct which would constitute grounds for action as
9 defined in this Section.

10 (36) Failure to report to the Department any adverse
11 judgment, settlement, or award arising from a liability
12 claim related to acts or conduct similar to acts or conduct
13 which would constitute grounds for action as defined in
14 this Section.

15 (37) Failure to transfer copies of medical records as
16 required by law.

17 (38) Failure to furnish the Department, its
18 investigators or representatives, relevant information,
19 legally requested by the Department after consultation
20 with the Chief Medical Coordinator or the Deputy Medical
21 Coordinator.

22 (39) Violating the Health Care Worker Self-Referral
23 Act.

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

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

28 (42) Entering into an excessive number of written
29 collaborative agreements with licensed advanced practice
30 nurses resulting in an inability to adequately collaborate
31 and provide medical direction.

32 (43) Repeated failure to adequately collaborate with
33 or provide medical direction to a licensed advanced
34 practice nurse.

35 (44) Willful failure to provide a woman with the
36 information required under subdivision (c) (1) or (c) (2) of

1 Section 15 of the Woman's Right to Know Act.

2 All proceedings to suspend, revoke, place on probationary
3 status, or take any other disciplinary action as the Department
4 may deem proper, with regard to a license on any of the
5 foregoing grounds, must be commenced within 3 years next after
6 receipt by the Department of a complaint alleging the
7 commission of or notice of the conviction order for any of the
8 acts described herein. Except for the grounds numbered (8), (9)
9 and (29), no action shall be commenced more than 5 years after
10 the date of the incident or act alleged to have violated this
11 Section. In the event of the settlement of any claim or cause
12 of action in favor of the claimant or the reduction to final
13 judgment of any civil action in favor of the plaintiff, such
14 claim, cause of action or civil action being grounded on the
15 allegation that a person licensed under this Act was negligent
16 in providing care, the Department shall have an additional
17 period of one year from the date of notification to the
18 Department under Section 23 of this Act of such settlement or
19 final judgment in which to investigate and commence formal
20 disciplinary proceedings under Section 36 of this Act, except
21 as otherwise provided by law. The time during which the holder
22 of the license was outside the State of Illinois shall not be
23 included within any period of time limiting the commencement of
24 disciplinary action by the Department.

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

34 The Department may refuse to issue or take disciplinary
35 action concerning the license of any person who fails to file a
36 return, or to pay the tax, penalty or interest shown in a filed

1 return, or to pay any final assessment of tax, penalty or
2 interest, as required by any tax Act administered by the
3 Illinois Department of Revenue, until such time as the
4 requirements of any such tax Act are satisfied as determined by
5 the Illinois Department of Revenue.

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

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

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

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

18 (d) what constitutes gross negligence in the practice
19 of medicine.

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

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

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

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

1 of their license.

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

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

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

32 (D) The Medical Disciplinary Board shall recommend to the
33 Department civil penalties and any other appropriate
34 discipline in disciplinary cases when the Board finds that a
35 physician willfully performed an abortion without providing
36 the woman with the information required under subdivision

1 (c)(1) or (c)(2) of Section 15 of the Woman's Right to Know
2 Act. Upon the Board's recommendation, the Department shall
3 impose, for the first violation, a civil penalty of \$1,000 and
4 for a second or subsequent violation, a civil penalty of
5 \$5,000.

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

8 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

11 (A) Entities required to report.

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

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

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

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

36 (4) State's Attorneys. The State's Attorney of each

1 county shall report to the Disciplinary Board all instances
2 in which a person licensed under this Act is convicted or
3 otherwise found guilty of the commission of any felony. The
4 State's Attorney of each county may report to the
5 Disciplinary Board through a verified complaint any
6 instance in which the State's Attorney believes that a
7 physician has willfully violated the requirements to
8 provide information to a woman under subdivision (c) (1) or
9 (c) (2) of Section 15 of the Woman's Right to Know Act. The
10 State's Attorney of each county may report to the
11 Disciplinary Board through a verified complaint any
12 instance in which the State's Attorney believes that a
13 physician has willfully violated the notice requirements
14 of the Parental Notice of Abortion Act of 1995.

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

27 (B) Mandatory reporting. All reports required by items
28 (34), (35), and (36) of subsection (A) of Section 22 and by
29 Section 23 shall be submitted to the Disciplinary Board in a
30 timely fashion. The reports shall be filed in writing within 60
31 days after a determination that a report is required under this
32 Act. All reports shall contain the following information:

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

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

1 (3) The name or other means of identification of any
2 patient or patients whose treatment is a subject of the
3 report, provided, however, no medical records may be
4 revealed without the written consent of the patient or
5 patients.

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

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

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

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

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

30 Nothing contained in this Section shall act to in any way,
31 waive or modify the confidentiality of medical reports and
32 committee reports to the extent provided by law. Any
33 information reported or disclosed shall be kept for the
34 confidential use of the Disciplinary Board, the Medical
35 Coordinators, the Disciplinary Board's attorneys, the medical
36 investigative staff, and authorized clerical staff, as

1 provided in this Act, and shall be afforded the same status as
2 is provided information concerning medical studies in Part 21
3 of Article VIII of the Code of Civil Procedure.

4 (C) Immunity from prosecution. Any individual or
5 organization acting in good faith, and not in a wilful and
6 wanton manner, in complying with this Act by providing any
7 report or other information to the Disciplinary Board, or
8 assisting in the investigation or preparation of such
9 information, or by participating in proceedings of the
10 Disciplinary Board, or by serving as a member of the
11 Disciplinary Board, shall not, as a result of such actions, be
12 subject to criminal prosecution or civil damages.

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

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

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

36 The Attorney General shall determine within 7 days after

1 receiving such notice, whether he or she will undertake to
2 represent the member.

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

11 The notification shall include a written notice setting
12 forth the person's right to examine the report. Included in
13 such notification shall be the address at which the file is
14 maintained, the name of the custodian of the reports, and the
15 telephone number at which the custodian may be reached. The
16 person who is the subject of the report shall submit a written
17 statement responding, clarifying, adding to, or proposing the
18 amending of the report previously filed. The statement shall
19 become a permanent part of the file and must be received by the
20 Disciplinary Board no more than 60 days after the date on which
21 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 Section 99. Effective date. This Act takes effect 120 days
11 after becoming law.