

By: Representative Moak

To: Public Health and Human Services; Judiciary A

HOUSE BILL NO. 45

1 AN ACT TO CREATE THE MEDICAL PRACTICE DISCLOSURE ACT; TO
2 PROVIDE LEGISLATIVE INTENT; TO REQUIRE THE COLLECTION OF
3 INFORMATION BY THE STATE BOARD OF MEDICAL LICENSURE; TO REQUIRE
4 THE REPORTING OF CRIMINAL CONVICTIONS; TO REQUIRE CERTAIN REPORTS
5 BY HOSPITALS; TO REQUIRE REPORTS OF DISCIPLINARY ACTIONS; TO
6 REQUIRE INSURERS TO REPORT MALPRACTICE CLAIMS AND ACTIONS; TO
7 REQUIRE PHYSICIANS TO REPORT SETTLEMENTS AND ARBITRATION AWARDS;
8 TO PROVIDE PUBLIC ACCESS TO REPORTED INFORMATION; TO PROVIDE FOR
9 FEES; TO PROVIDE FOR THE PROMULGATION OF RULES AND REGULATIONS;
10 AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. This act shall be known and may be cited as the
13 "Medical Practice Disclosure Act."

14 SECTION 2. The State of Mississippi hereby recognizes the
15 necessity of allowing individuals to make informed and educated
16 choices regarding health care services and the essential need to
17 provide information to facilitate these important decisions. It
18 further recognizes that public disclosure of certain health care
19 information would lower the cost of health care through the use of
20 the most appropriate provider and improve the quality of health
21 care services by mandating the reporting of information regarding
22 health care providers. It is the intention of the Legislature to
23 establish a procedure by which the general public may obtain
24 essential and basic information concerning potential health care
25 providers, while ensuring the accuracy and disclosure of all
26 relevant information that would enable individuals to
27 informatively select their health care provider.

28 SECTION 3. (1) The State Board of Medical Licensure shall
29 collect for each physician licensed or otherwise practicing
30 medicine in the State of Mississippi the following information, in

31 a format developed by the board that shall be available for
32 dissemination to the public:

33 (a) A description of any criminal convictions for
34 felonies and violent misdemeanors as determined by the board. A
35 description of any criminal charges. For purposes of this
36 paragraph, a person shall be deemed to be convicted of a crime if
37 that person pleaded guilty or if that person was found or adjudged
38 guilty by a court of competent jurisdiction.

39 (b) A description of any charges to which a physician
40 pleads nolo contendere or where sufficient facts of guilt were
41 found and the matter was continued without a finding by a court of
42 competent jurisdiction.

43 (c) A description of any final disciplinary actions
44 taken by the State Board of Medical Licensure.

45 (d) A description of any final disciplinary actions by
46 licensing boards in other states or reported in the National
47 Practitioner Data Bank.

48 (e) A description of revocation or involuntary
49 restriction of hospital privileges that have been taken by a
50 hospital's governing body and any other official of a hospital
51 after procedural due process has been afforded, or the resignation
52 from or nonrenewal of medical staff membership or the restriction
53 of privileges at a hospital taken in lieu of or in settlement of a
54 pending disciplinary case.

55 (f) Notwithstanding any law to the contrary, all
56 medical malpractice court judgments and all medical malpractice
57 arbitration awards in which a payment is awarded to a complaining
58 party and all settlements of medical malpractice claims in which a
59 payment is made to a complaining party. Information concerning
60 all settlements shall be accompanied by the following statements:

61 "Settlement of a claim may occur for a variety of reasons
62 which do not necessarily reflect negatively on the professional
63 competence or conduct of the physician. A payment in settlement

64 of a medical malpractice action or claim should not be construed
65 as creating a presumption that medical malpractice has occurred."

66 All civil court awards or settlements arising from
67 allegations of sexual misconduct filed by patients, employees or
68 hospital staff shall be provided.

69 (g) A paragraph describing the malpractice experience
70 of each medical specialty and an explanation that some high risk
71 specialties experience more malpractice claims than less risky
72 specialties. This information shall be updated on an annual basis
73 reflecting the most recent malpractice claims experience of each
74 specialty.

75 (h) Names of medical schools and dates of graduation.

76 (i) Graduate medical education.

77 (j) Specialty board certification(s).

78 (k) Number of years in practice.

79 (l) Name of hospitals where the physician has
80 privileges.

81 (m) Appointments to medical school faculties and
82 indication as to whether the physician has a responsibility for
83 graduate medical education.

84 (n) Information regarding publications in peer-reviewed
85 medical literature.

86 (o) Information regarding professional or community
87 service activities and awards.

88 (p) The location of the physician's primary practice
89 location.

90 (q) The indication of any translating services that may
91 be available at the physician's primary practice location.

92 (r) An indication of whether the physician participates
93 in the Medicaid program.

94 (2) The State Board of Medical Licensure shall provide each
95 physician with a copy of that physician's profile prior to the
96 release to the public.

97 (3) A physician shall be provided a reasonable time, not to
98 exceed sixty (60) days, to correct factual inaccuracies or
99 omissions that may appear in the profile.

100 (4) (a) A physician may petition the State Board of Medical
101 Licensure for permission to temporarily omit certain information
102 as described in paragraph (b) of this subsection for a period not
103 to exceed one (1) year.

104 (b) If the physician demonstrates to the board that
105 disclosure of the information would represent an undue risk of
106 injury to the physician or the property of the physician, the
107 board may grant the request and the information shall be withheld
108 until such time as the situation is resolved, based on the
109 presentation of evidence to the board, for a period not to exceed
110 one (1) year.

111 (5) The State Board of Medical Licensure shall not disclose
112 any pending malpractice claims to the public, and nothing in this
113 section shall be construed to prohibit the State Board of Medical
114 Licensure from investigating and disciplining a physician on the
115 basis of pending medical malpractice claim information obtained
116 under this act.

117 **SECTION 4.** (1) The clerk of any court in which a physician
118 is convicted of any crime or in which any unregistered
119 practitioner is convicted of holding himself out as a practitioner
120 of medicine or of practicing medicine shall, within one (1) week
121 thereafter, report the same to the State Board of Medical
122 Licensure together with a copy of the court proceedings in the
123 case.

124 (2) For the purposes of this section, a person shall be
125 deemed to be convicted of a crime if he pleaded guilty or was
126 found or adjudged guilty by a court of competent jurisdiction.

127 (3) Upon review, the State Board of Medical Licensure shall
128 provide the information for purposes consistent with this act.

129 (4) In the instance where a physician pleads nolo contendere
130 to charges or where sufficient facts of guilt were found and the
131 matter was continued without a finding by a court of competent
132 jurisdiction, the clerk shall, within one (1) week thereafter,
133 report the same to the State Board of Medical Licensure together
134 with a copy of the court proceedings in the case. Upon review,
135 the State Board of Medical Licensure shall provide the information
136 for purposes consistent with this act.

137 SECTION 5. (1) Each hospital or health care facility
138 licensed under the act of July 19, 1979, (Public Law 130, No. 48),
139 known as the Health Care Facilities Act, shall report to the State
140 Board of Medical Licensure if the hospital or facility denies,
141 restricts, revokes or fails to renew staff privileges or accepts
142 the resignation of a physician for any reason related to the
143 physician's competence to practice medicine or for any other
144 reason related to a complaint or allegation regarding any
145 violation of law, regulation, rule or bylaw of the hospital or
146 facility regardless of whether the complaint or allegation
147 specifically states a violation of a specific law, regulation,
148 rule or bylaw. The report shall be filed within thirty (30) days
149 of the occurrence of the reportable action and include details
150 regarding the nature and circumstances of the action, its date and
151 reasons for it.

152 (2) Each hospital or health care facility licensed under the
153 Health Care Facilities Act shall file an annual disciplinary
154 report with the board no later than January 31 and shall send the
155 report by certified or registered mail. The report shall
156 summarize the action reports submitted for the previous calendar
157 year and shall be signed under oath. If the hospital or facility
158 submitted no action reports for the previous calendar year, then
159 the report required by this subsection shall state that no action
160 reports were required.

161 (3) No hospital, health care facility or person that reports
162 information to the department under this section shall be liable
163 to the physician referenced in the report for making the report,
164 provided that the report is made in good faith and without malice.

165 **SECTION 6.** (1) A professional medical association, society,
166 body, professional standards review organization or similarly
167 constituted professional organization, whether or not such
168 association, society, body or organization is local, regional,
169 state, national or international in scope, shall report to the
170 State Board of Medical Licensure the disciplinary action taken
171 against any physician. Such report of disciplinary action shall
172 be filed with the board within thirty (30) days of such
173 disciplinary action, shall be in writing and shall be mailed to
174 the board by certified or registered mail.

175 (2) As used in this section, the term "disciplinary action"
176 includes, but is not limited to, revocation, suspension, censure,
177 reprimand, restriction, nonrenewal, denial or restriction of
178 privileges or a resignation shall be reported only when the
179 resignation or the denial or restriction of privileges is related
180 in any way to:

181 (a) The physician's competence to practice medicine; or

182 (b) A complaint or allegation regarding any violation
183 of law or regulation, including, but not limited to, the
184 regulations of the State Health Department or the Medical
185 Licensure Board or hospital, health care facility or professional
186 medical association bylaws, whether or not the complaint or
187 allegation specifically cites violation of a specified law,
188 regulation or bylaw.

189 **SECTION 7.** Every insurer or risk management organization
190 which provides professional liability insurance to a physician
191 shall report to the State Board of Medical Licensure any claim or
192 action for damages for personal injuries alleged to have been

193 caused by error, omission or negligence in the performance of the
194 physician's professional services where the claim resulted in:

- 195 (a) Final judgment in any amount;
- 196 (b) Settlement in any amount; or
- 197 (c) Final disposition not resulting in payment on
198 behalf of the insured.

199 (2) Reports shall be filed with the State Board of Medical
200 Licensure no longer than thirty (30) days following the occurrence
201 of any event listed under this section.

202 (3) The reports shall be in writing on a form prescribed by
203 the State Board of Medical Licensure and shall contain the
204 following information.

205 (a) The name, address, specialty coverage and policy
206 number of the physician against whom the claim is made;

207 (b) The name, address and age of the claimant or
208 plaintiff;

209 (c) The nature and substance of the claim;

210 (d) The date when and place where the claim arose;

211 (e) The amounts paid, if any, and the date, manner of
212 disposition, judgment and settlement;

213 (f) The date and reason for final disposition, if no
214 judgment or settlement; and

215 (g) Such additional information as the State Board of
216 Medical Licensure shall require. No insurer or its agents or
217 employees shall be liable in any cause of action arising from
218 reporting to the State Board of Medical Licensure as required in
219 this section.

220 **SECTION 8.** (1) A physician who does not possess
221 professional liability insurance shall report to the State Board
222 of Medical Licensure every settlement or arbitration award of a
223 claim or action for damages for death or personal injury caused by
224 negligence, error or omission in practice, or the unauthorized
225 rendering of professional services by the physician. The report

226 shall be made within thirty (30) days after the settlement
227 agreement has been reduced to writing or thirty (30) days after
228 service of the arbitration award on the parties as long as it is
229 signed by all of the parties.

230 (2) (a) Exempt as otherwise provided in paragraph (b), a
231 physician who fails to comply with the provisions of this section
232 shall be subject to a civil penalty of not more than Five Hundred
233 Dollars (\$500.00).

234 (b) A physician who makes a knowing or intentional
235 failure to comply with the provisions of this act, or conspires or
236 colludes not to comply with the provisions of this act, or hinders
237 or impedes any other person in such compliance, shall be subject
238 to a civil penalty of not less than Five Thousand Dollars
239 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

240 **SECTION 9.** (1) Effective January 1, 2005, a fee of not more
241 than Twenty Dollars (\$20.00) shall be assessed to all physicians,
242 and the fee shall be collected by the State Board of Medical
243 Licensure every two (2) years to offset the costs associated with
244 this act.

245 (2) The State Board of Medical Licensure shall make
246 available to the public, upon request by any person or entity and
247 upon payment of a reasonable copy charge not to exceed One Dollar
248 (\$1.00) per page, the information compiled by the State Board of
249 Medical Licensure as provided in Section 3 of this act.

250 (3) Each physician shall make available to the public, free
251 of charge, information compiled by the State Board of Medical
252 Licensure in Section 3 of this act. All physicians shall
253 conspicuously post at their primary place of practice a notice
254 stating, "free background information available upon request."

255 (4) The board shall disseminate information of Section 3 of
256 this act by posting the information on the state's website on the
257 Internet. The fees collected under subsection (1) may be used to
258 pay for the expenses of complying with this subsection.

259 **SECTION 10.** The State Board of Medical Licensure shall in
260 the manner provided by law promulgate the rules and regulations
261 necessary to carry out the provisions of this act, including, but
262 not limited to, the exchange of information between the State
263 Board of Medical Licensure and other relevant state agencies,
264 insurance carriers, hospitals and judicial administrative offices.

265 **SECTION 11.** This act shall take effect and be in force from
266 and after January 1, 2005.