

Illinois Physicians and the Patients' Right to Know Act: Physician Profile Program Returns

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The debate over public disclosure of physician information has, once again, been settled. Due to the recent passage of the Illinois Patients' Right to Know Act, the Physician Profile program is back. On August 9, 2011, Governor Pat Quinn signed the controversial act, which will make information regarding every licensed physician and chiropractor in the state publicly available on the Illinois Department of Financial and Professional Regulation (IDFPR) website. The Physician Profile program, a web-based search tool that was originally launched in 2008, was suspended in February 2010 when the Illinois Supreme Court struck down the statute that created the program.

What does this development mean for physicians in Illinois? In addition to basic information (name, medical school, training, hospital privilege status, etc.), physician profiles will contain a five-year history regarding final IDFPR disciplinary actions; final disciplinary actions by licensing boards in other states; criminal convictions for felonies and Class A misdemeanors; and revocation or restriction of hospital privileges, among other information. Also included will be disclosure of "all medical malpractice court judgments and all medical malpractice arbitration awards in which payment was awarded to a complaining party."

While disclosure of such information can be beneficial to patient decision-making, certain required information is controversial, at best. For example, the Patients' Right to Know Act requires the disclosure of "all *settlements* of medical malpractice claims in which a payment was made to a complaining party." For physicians, this may become particularly troubling because, in reality, cases settle for a variety of reasons—many of which are unrelated to whether a physician has committed a negligent act.

In response to this concern, the Patients' Right to Know Act requires IDFPR to provide the following disclaimer: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." While this language offers a modicum of context for a settlement disclosure, it is uncertain whether patients will actually consider the disclaimer when choosing a new physician or deciding to stay with a current physician. It is also uncertain what impact, if any, this disclosure requirement will have on a physician's willingness to settle a claim.

Currently, IDFPR is updating physician information and expects to relaunch the search feature on its website in mid-October 2011. Prior to that time, each physician will receive a draft of his or her profile and have 60 days to correct any factual inaccuracies. When provided with the draft, you should not wait until the last minute to review the information and make corrections. Additionally, if you have applied for or if you are in the process of renewing your hospital privileges, or if your hospital privileges are at risk of revocation or restriction, you should consult your attorney to determine the best strategy for a successful outcome. Not only can hospital privilege decisions affect your livelihood, but they will also be publicly available on the IDFPR website.

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