

# Table of Contents

## Volume 21

### **PART A. LICENSURE**

#### **CHAPTER 1. PHYSICIAN LICENSURE**

##### **I. OVERVIEW**

- § 1:1 Background
- § 1:2 General licensure requirements

##### **II. LICENSURE**

- § 1:3 Examination to practice medicine in all branches
- § 1:4 Types of licenses to practice medicine in all branches
- § 1:5 Examination for licensure to practice chiropractic medicine
- § 1:6 Types of licenses to practice as a chiropractic physician
- § 1:7 Mandated physician profiles
- § 1:8 Grant and maintenance of license
- § 1:9 Renewal of license
- § 1:10 International medical graduates

##### **III. MEDICAL PRACTICE AND NONPHYSICIAN HEALTH CARE PROVIDERS**

###### **A. IN GENERAL**

- § 1:11 Regulation of the practice of medicine
- § 1:12 Illegally practicing medicine

###### **B. DELEGATION OF DUTIES TO NONPHYSICIAN PROVIDERS AND PRACTITIONERS**

- § 1:13 Support personnel

##### **IV. ADMINISTRATIVE DISCIPLINARY PROCEEDINGS**

- § 1:14 Disciplinary actions against physicians
- § 1:15 Initial claim and complaint
- § 1:16 Limitations period

- § 1:17 Prehearing and hearing procedures
- § 1:18 —Consent order
- § 1:19 —Formal complaint and hearing
- § 1:20 —Case illustrations
- § 1:21 Emergency suspension of a license
- § 1:22 Rehearing and final order
- § 1:23 Appeal
- § 1:24 Information sources for investigations and hearings
- § 1:25 Grounds for discipline and penalties
- § 1:26 —Dishonorable, unethical, unprofessional, or immoral conduct
- § 1:27 —Revocation based on another state's action
- § 1:28 —Improperly obtained license
- § 1:29 Restoration or reinstatement of license

## **V. REPORTS RELATING TO PROFESSIONAL CONDUCT AND CAPACITY**

- § 1:30 Reporting guidelines of the profession
- § 1:31 Substance abuse and the impaired physician
- § 1:32 —Treatment and recovery
- § 1:33 The Illinois Mandatory Reporting Law
- § 1:34 —Entities required to report
- § 1:35 —Report formats
- § 1:36 —Disposition of disciplinary reports
- § 1:37 —Voluntary monitoring
- § 1:38 —Mandatory physician profile
- § 1:39 National Practitioner Data Bank
- § 1:40 —Reporting to the Data Bank
- § 1:41 —Access to Data Bank information
- § 1:42 —Erroneous and disputed information

## **CHAPTER 2. ALLIED HEALTH CARE PROFESSIONALS**

### **I. IN GENERAL**

- § 2:1 Background
- § 2:2 General licensure administration

### **II. DENTISTS**

- § 2:3 Introduction
- § 2:4 Dentistry as a profession
- § 2:5 Board of Dentistry
- § 2:6 Types of licenses
- § 2:7 Qualifications for licensure

## TABLE OF CONTENTS

§ 2:8	Investigations, informal conferences and notice
§ 2:9	Hearings
§ 2:10	Recommendations by Board of Dentistry
§ 2:11	Recommendations for disciplinary action—Action by Secretary
§ 2:12	Disciplinary actions
§ 2:13	Discipline
§ 2:14	Grounds for discipline
§ 2:15	Summary suspension
§ 2:16	Suspension of a license for failure to pay restitution
§ 2:17	Unlicensed practice; violation; civil penalty
§ 2:18	Statute of limitations
§ 2:19	Continuing education
§ 2:20	Dentists Collaboration with Certified Registered Nurse Anesthetists

### III. PODIATRISTS

§ 2:21	Introduction
§ 2:22	Podiatry as a profession
§ 2:23	Podiatric Medical Licensing Board
§ 2:24	Applications for original license
§ 2:25	Examination for licensure
§ 2:26	Qualifications for licensure
§ 2:27	Temporary license, qualifications and terms
§ 2:28	Licenses; renewal; restoration; military service
§ 2:29	Inactive licenses
§ 2:30	Practice without a license forbidden
§ 2:31	Investigations and notice
§ 2:32	Hearing
§ 2:33	Discipline
§ 2:34	Grounds for discipline
§ 2:35	Summary suspension
§ 2:36	Statute of limitations
§ 2:37	Physical examination
§ 2:38	Violations, injunction, cease and desist order
§ 2:39	Temporary suspension of a license
§ 2:40	Restoration of suspended or revoked license
§ 2:41	Continuing podiatric education
§ 2:42	Podiatrist collaboration with an Advanced Practice Registered Nurse

### IV. OPTOMETRISTS

§ 2:43	Introduction
§ 2:44	Optometry as a profession
§ 2:45	Optometric Licensing and Disciplinary Board
§ 2:46	Applications for licensure

- § 2:47 Examination for licensure
- § 2:48 Qualifications for licensure
- § 2:49 Authority to prescribe and administer ocular  
pharmaceutical agents and vaccines
- § 2:50 Telehealth
- § 2:51 Investigations and notice
- § 2:52 Hearing
- § 2:53 Subpoena and oaths
- § 2:54 Findings of fact, conclusions of law, and  
recommendations
- § 2:55 Service of report; rehearing; order
- § 2:56 Discipline
- § 2:57 Grounds for discipline
- § 2:58 Unlicensed practice; violation; civil penalty
- § 2:59 Violations, injunction, cease and desist order
- § 2:60 Temporary suspension of a license
- § 2:61 Renewal, reinstatement or restoration of licenses
- § 2:62 Continuing education

## **V. ADVANCED PRACTICE REGISTERED NURSES**

- § 2:63 Introduction
- § 2:64 Advanced practice registered nurse as a profession
- § 2:65 Qualifications for licensure
- § 2:66 Advanced Practice Registered Nurse scope of practice
- § 2:67 Written collaborative agreements
- § 2:68 Full practice authority
- § 2:69 Advanced practice nursing in hospitals, hospital  
affiliates or ambulatory surgical treatment centers
- § 2:70 Prescriptive authority
- § 2:71 Certified registered nurse anesthetists
- § 2:72 License pending status
- § 2:73 Discipline
- § 2:74 Grounds for discipline
- § 2:75 Reports relating to professional conduct and capacity
- § 2:76 Unlicensed practice; violation; civil penalty
- § 2:77 Continuing education

## **VI. PHYSICIAN ASSISTANTS**

- § 2:78 Introduction
- § 2:79 Physician assistant as a profession
- § 2:80 Physician assistant committee
- § 2:81 Application for licensure
- § 2:82 Qualifications for licensure
- § 2:83 Volunteer license
- § 2:84 Licensees from other states
- § 2:85 Expiration, inactive, renewal of license

## TABLE OF CONTENTS

§ 2:86	Collaboration requirements
§ 2:87	Billing
§ 2:88	Physician assistant practice in hospitals, hospital affiliates or ambulatory surgical treatment centers
§ 2:89	Written collaborative agreements and prescriptive authority (outside of hospitals, hospital affiliates, federally qualified health centers or ambulatory surgical treatment centers)
§ 2:90	Investigations and notice
§ 2:91	Hearing
§ 2:92	Board report
§ 2:93	Written report
§ 2:94	Discipline
§ 2:95	Grounds for discipline
§ 2:96	Injunction
§ 2:97	Unlicensed practice violation, civil penalty
§ 2:98	Temporary suspension
§ 2:99	Restoration of license
§ 2:100	Continuing education

## VII. PHARMACISTS

§ 2:101	Introduction
§ 2:102	Pharmacist as a profession
§ 2:103	State Board of Pharmacy
§ 2:104	Pharmacy working conditions
§ 2:105	Pharmacy technicians
§ 2:106	Supportive staff
§ 2:107	Applications for original licensure
§ 2:108	Examination for original licensure
§ 2:109	Qualifications for licensure
§ 2:110	Licenses; renewal; restoration; military service
§ 2:111	Inactive licenses
§ 2:112	Practice without a license forbidden
§ 2:113	Investigations and notice
§ 2:114	Hearing
§ 2:115	Discipline
§ 2:116	Summary of suspension
§ 2:117	Violations, injunctions, cease and desist orders and temporary suspension of license
§ 2:118	Restoration of suspended or revoked license
§ 2:119	Continuing pharmacy education

## VIII. CLINICAL PSYCHOLOGISTS

§ 2:120	Clinical psychologist practice
§ 2:121	Prescribing clinical psychologists

## **CHAPTER 3. SCOPE OF PRACTICE OF LIMITED LICENSE PRACTITIONERS**

- § 3:1 Occupational Therapy Practice
- § 3:2 Registered Professional Nursing Practice
- § 3:3 Licensed Practical Nursing Practice
- § 3:4 Certified Nursing Assistant
- § 3:5 Medication Aides
- § 3:6 Speech-Language Pathology practice
- § 3:7 Audiology practice
- § 3:8 Physical therapy practice
- § 3:9 Athletic trainers practice
- § 3:10 Nursing home administrator practice
- § 3:11 Clinical Social Work Practice
- § 3:12 Marriage and family therapy practice
- § 3:13 Professional counselor and clinical professional counselor practice
- § 3:14 Hearing instrument dispenser practice
- § 3:15 Surgical assistants and surgical technologists
- § 3:16 Acupuncture practice
- § 3:17 Genetic counselor practice
- § 3:18 Naprapathic Practice
- § 3:19 Respiratory care
- § 3:20 Emergency medical technicians (EMT)
- § 3:21 Electrologist Licensing Act

## **PART B. PRACTICE SETTINGS/FACILITIES**

### **CHAPTER 4. HOSPITALS**

#### **I. INTRODUCTION**

- § 4:1 Overview

#### **II. HOSPITAL ORGANIZATION**

- § 4:2 Origin and development of hospitals
- § 4:3 Types of hospitals
- § 4:4 Legal bases for hospital operation
- § 4:5 Regulation of hospitals
- § 4:6 Hospital governing board

#### **III. PHYSICIAN CONTRACTING**

- § 4:7 Physicians employed by hospitals and hospital affiliates

#### **IV. MEDICAL STAFF**

- § 4:8 Medical staff membership and privileges

## TABLE OF CONTENTS

- § 4:9 Federal immunity
- § 4:10 State immunity—Defamation and other state claims
- § 4:11 Substantive due process
- § 4:12 Procedural due process
- § 4:13 Federal antitrust laws
- § 4:14 Dispute resolution

## **V. KEY FRAUD AND ABUSE TOPICS IN THE HOSPITAL-PHYSICIAN RELATIONSHIP**

- § 4:15 Physicians employed by hospitals and hospital affiliates

## **CHAPTER 5. OTHER HEALTH CARE FACILITIES**

### **I. AMBULATORY SURGICAL TREATMENT CENTERS (A.K.A. AMBULATORY SURGICAL CENTERS)**

- § 5:1 Overview
- § 5:2 State licensure
- § 5:3 Investigation of complaints
- § 5:4 Notice of violation
- § 5:5 Denial, suspension, or revocation of license
- § 5:6 Inspections and reports
- § 5:7 Rules governing limited procedure specialty centers
- § 5:8 Certificate of need for ASTC
- § 5:9 ASTC accreditation
- § 5:10 State Medicare certification
- § 5:11 Medicare/Medicaid reimbursement for ambulatory surgical care
- § 5:12 Fraud and abuse

### **II. ALTERNATIVE HEALTH CARE DELIVERY DEMONSTRATION PROGRAM**

#### **A. IN GENERAL**

- § 5:13 Overview

#### **B. PARTICULAR MODELS**

##### **1. Subacute Care Hospitals**

- § 5:14 Generally
- § 5:15 Licensure requirements
- § 5:16 License application

##### **2. Postsurgical Recovery Care Centers**

- § 5:17 Generally

§ 5:18 Licensure requirements

§ 5:19 License application

3. Children's Community-Based Health Care Centers

§ 5:20 Generally

§ 5:21 Licensure requirements

§ 5:22 License application

4. Community-Based Rehabilitation Center

§ 5:23 Generally

§ 5:24 Licensure requirements

§ 5:25 License application

5. Alzheimer's Disease Management Centers

§ 5:26 Generally

§ 5:27 Licensure requirements

§ 5:28 License application

6. Birth Center

§ 5:29 Generally

§ 5:30 Licensure requirements

§ 5:31 License application

C. UNIFORM LICENSURE STANDARDS FOR ALTERNATIVE HEALTH CARE MODELS

§ 5:32 Generally

§ 5:33 Certificate of need

§ 5:34 Revocation, suspension, denial, and nonrenewal of licenses

§ 5:35 Medicare and Medicaid reimbursement

§ 5:36 Charitable care

§ 5:37 Background check

III. NURSING HOMES AND LONG-TERM CARE FACILITIES

§ 5:38 Overview

§ 5:39 Licensure and regulation

§ 5:40 Accreditation

§ 5:41 Certification

§ 5:42 Resident contracts and rights

§ 5:43 Physician relations and responsibilities

§ 5:44 Payment and reimbursement matters

§ 5:45 Health care reform legislation affecting skilled nursing facilities

TABLE OF CONTENTS

**IV. CLINICAL LABORATORIES AND BLOOD BANKS**

- § 5:46 Generally
- § 5:47 Clinical laboratory certification
- § 5:48 Certificate application
- § 5:49 Standards
- § 5:50 Standards for quality in cytology services
- § 5:51 Inspections
- § 5:52 Certificate denial
- § 5:53 Intermediate sanctions
- § 5:54 Certificate limitation, revocation, and suspension
- § 5:55 Notice and appeals procedure
- § 5:56 Judicial review
- § 5:57 Injunction
- § 5:58 Relationship between federal and state law
- § 5:59 Illinois law
- § 5:60 Results of tests
- § 5:61 Inspections by Department of Public Health
- § 5:62 Emergency access to records
- § 5:63 Penalties and fines
- § 5:64 Blood banks
- § 5:65 Blood bank regulation
- § 5:66 FDA regulation
- § 5:67 Registration of blood establishments
- § 5:68 Licensure of blood establishments
- § 5:69 Standards
- § 5:70 Inspections by FDA or DHHS
- § 5:71 Suspension or revocation of license
- § 5:72 Penalties
- § 5:73 Illinois licensure requirements
- § 5:74 Blood donation
- § 5:75 Human immunodeficiency virus (HIV) testing
- § 5:76 Legal liability

**V. ALCOHOL AND OTHER DRUG DEPENDENCY FACILITIES AND PROGRAMS**

- § 5:77 Overview
- § 5:78 Regulation of narcotics and controlled substances
- § 5:79 Regulations applicable to individual practitioners—  
State
- § 5:80 —Federal
- § 5:81 Regulations applicable to institutions—State
- § 5:82 —Federal

**VI. FEDERALLY QUALIFIED HEALTH CENTERS**

- § 5:83 Background

- § 5:84 Qualifying as an FQHC
- § 5:85 Advantages of FQHC designation

## **CHAPTER 6. HOSPICE AND HOME HEALTH CARE PROGRAMS**

### **I. IN GENERAL**

- § 6:1 Introduction

### **II. HOSPICE CARE PROGRAMS**

- § 6:2 Generally
- § 6:3 Licensure
- § 6:4 License application
- § 6:5 Inspections
- § 6:6 Denial, revocation or suspension of license
- § 6:7 Rules and regulations
- § 6:8 Hospice program accreditation
- § 6:9 Medicare reimbursement for hospice care

### **III. HOME HEALTH CARE AGENCIES**

- § 6:10 Generally
- § 6:11 License application
- § 6:12 License denial, renewal, revocation, fines, and penalties
- § 6:13 Exemptions
- § 6:14 Administrative organization
- § 6:15 Agency supervision
- § 6:16 Medicare reimbursement for home health services
- § 6:17 Home health agency accreditation

## **CHAPTER 7. HEALTH FACILITY PLANNING**

### **I. IN GENERAL**

- § 7:1 Introduction
- § 7:2 Background
- § 7:3 Illinois Health Facilities Planning Act
- § 7:4 —Violations of the Act

### **II. REVIEW BOARD**

- § 7:5 Generally
- § 7:6 Powers and duties
- § 7:7 Ex parte communications

## TABLE OF CONTENTS

§ 7:8 Illinois Administrative Procedure Act

### **III. GENERAL CERTIFICATE OF NEED (“CON”) CRITERIA**

§ 7:9 Persons and types of facilities subject to Board review  
§ 7:10 Projects requiring a permit  
§ 7:11 Exempt projects and transactions  
§ 7:12 Limitations on exemptions

### **IV. APPLICATION FOR PERMIT PROCESS**

§ 7:13 Classification of applications  
§ 7:14 Categories of service requiring a permit  
§ 7:15 Review Board review criteria  
§ 7:16 Review Board criteria for facility plans  
§ 7:17 Permit application process  
§ 7:18 Relinquishment of a permit  
§ 7:19 Limitations on permits  
§ 7:20 Denied applications  
§ 7:21 Individuals adversely affected

### **V. REPORTING AND NOTIFICATION REQUIREMENTS**

§ 7:22 Reporting

## **CHAPTER 8. MANAGED CARE**

### **I. IN GENERAL**

§ 8:1 Overview  
§ 8:2 HMOs and the birth of the IPA  
§ 8:3 Generalized response to capitation and managed care—  
Integrated delivery systems  
§ 8:4 Early developments: the IPA and the advent of  
capitation  
§ 8:5 HMO backlash and the rise of the PPO  
§ 8:6 Pay for performance  
§ 8:7 Accountable care organizations  
§ 8:8 Medicaid managed care organizations

### **II. MANAGED CARE LIABILITY, ENFORCEMENT AND INTEGRATION**

§ 8:9 MCO liability  
§ 8:10 ERISA liability  
§ 8:11 Antitrust laws and collective physician negotiation  
§ 8:12 “Messenger model”

- § 8:13 Collective negotiations
- § 8:14 Collective negotiation, data integration, and quality and efficiency
- § 8:15 Clinical integration
- § 8:16 Enforcement activity

### **III. MANAGED CARE IN ILLINOIS**

#### **A. HMOS IN ILLINOIS**

- § 8:17 Overview
- § 8:18 Application for HMO certificate of authority
- § 8:19 Inspections and reports
- § 8:20 Denial, suspension, or revocation of certificate
- § 8:21 Guaranty fund

#### **B. PPOS IN ILLINOIS**

- § 8:22 PPOs—Overview

#### **C. MANAGED CARE EXPANSION**

- § 8:23 Managed care community networks
- § 8:24 Accountable care entities
- § 8:25 Value-based enterprises

## **PART C. REGULATION AND THE PRACTICE OF MEDICINE**

### **CHAPTER 9. CONTROLLED SUBSTANCES**

- § 9:1 Introduction
- § 9:2 Drug schedules for controlled substances
- § 9:3 Dispensing and administration of opioid antagonists
- § 9:4 Methamphetamine Precursor Control Act
- § 9:5 Methamphetamine Precursor Tracking Act
- § 9:6 Licensure to distribute and dispense
- § 9:7 Suspension or revocation of a license
- § 9:8 Required records
- § 9:9 Security requirements
- § 9:10 DEA registration
- § 9:11 Issuance and purposes of prescriptions
- § 9:12 Dispensation of Schedule II substances
- § 9:13 Dispensation of Schedules III, IV, and V controlled substances
- § 9:14 Offenses and penalties
- § 9:15 Exemption for hospitals, nursing homes, and drug programs

## TABLE OF CONTENTS

- § 9:16 Look-alike substances
- § 9:17 Syringes and needles
- § 9:18 Dispensing generically equivalent drug products
- § 9:19 Medication and pharmacy shopping

## **CHAPTER 10. ILLINOIS COMPASSIONATE USE OF MEDICAL CANNABIS PILOT PROGRAM ACT**

- § 10:1 Introduction
- § 10:2 Conflict with federal law
- § 10:3 Overview of the Act
- § 10:4 Enforcement of the Act
- § 10:5 Definitions
- § 10:6 Registered qualifying patients and designated caregivers
- § 10:7 The role of certifying health care professionals
- § 10:8 Limitations on the use of cannabis
- § 10:9 Immunities and protections
- § 10:10 Dispensaries
- § 10:11 Dispensary agents
- § 10:12 Cultivation centers
- § 10:13 Cultivation center agents
- § 10:14 Cannabis-infused products
- § 10:15 Laboratory testing of cannabis and cannabis-infused products
- § 10:16 Other provisions related to patients, dispensaries or cultivation centers
- § 10:17 Taxation
- § 10:18 Political contributions banned
- § 10:19 Driving under the influence of medical cannabis

## **CHAPTER 11. MENTAL HEALTH ISSUES**

### **I. ADMISSION TO MENTAL HEALTH FACILITIES**

- § 11:1 Introduction
- § 11:2 Admission of adults—Introduction
- § 11:3 —Informal
- § 11:4 —Voluntary
- § 11:5 —Involuntary Inpatient
- § 11:6 —Involuntary Outpatient
- § 11:7 Admission of minors

### **II. MENTAL HEALTH TREATMENT**

- § 11:8 Introduction
- § 11:9 Federal constitutional right of refusal

- § 11:10 Administration of psychotropic medication and electroconvulsive therapy in Illinois
- § 11:11 Court-ordered administration of treatment

### **III. CONFIDENTIALITY OF MENTAL HEALTH RECORDS**

- § 11:12 Introduction
- § 11:13 Illinois Mental Health and Developmental Disabilities Confidentiality Act
  - § 11:14 —When disclosure allowed
  - § 11:15 Authorized disclosure by persons with authority
  - § 11:16 —Requirements for authorization
  - § 11:17 Disclosure pursuant to court order
  - § 11:18 Disclosure pursuant to an exception of the Act—  
Generally
    - § 11:19 —Routine disclosures
    - § 11:20 —Review of therapist or agency
    - § 11:21 —Investigations concerning rights of recipients
    - § 11:22 —Interagency disclosures
    - § 11:23 —Treatment and coordination of care
    - § 11:24 —Disclosures pursuant to the Sexually Violent Persons Commitment Act
    - § 11:25 —Judicial and other proceedings
    - § 11:26 —Court-ordered examinations
    - § 11:27 —Fitness evaluations
    - § 11:28 —Civil commitment proceedings
    - § 11:29 —Probate Act and Juvenile Court Act
    - § 11:30 —In camera review
    - § 11:31 —Duty to warn and permissive and mandatory reporting
    - § 11:32 —Health information exchanges
    - § 11:33 —Business associates
    - § 11:34 —Record locator services
    - § 11:35 —Establishment and disclosure of limited data sets and de-identified information
    - § 11:36 —Research in accordance with the requirements of HIPAA
    - § 11:37 Waiver
    - § 11:38 Actions by aggrieved parties for violation of the Act

### **IV. FIREARM OWNERS IDENTIFICATION CARD ACT (FOID) REPORTING**

- § 11:39 Introduction
- § 11:40 Reporting admission to and discharge from mental health facilities
- § 11:41 Reporting clear and present danger

TABLE OF CONTENTS

§ 11:42 Reporting developmental disability

**CHAPTER 12. EMERGENCY MEDICAL TREATMENT**

- § 12:1 Overview
- § 12:2 Illinois “Good Samaritan” provisions
- § 12:3 Illinois regulation of emergency medical services and hospitals
- § 12:4 Emergency Medical Treatment and Active Labor Act overview and applicability
- § 12:5 Screening, stabilization and transfer requirements
- § 12:6 Remedies for a hospital’s failure to comply with EMTALA
- § 12:7 EMTALA and physicians

**CHAPTER 13. ACTIONS AND REPORTS REQUIRED OF PHYSICIANS IN TREATMENT SITUATIONS**

**I. INTRODUCTION**

§ 13:1 Overview

**II. PREGNANCY AND BIRTH**

- § 13:2 Generally
- § 13:3 Required reports
- § 13:4 Required acts

**III. ABORTION**

- § 13:5 Generally
- § 13:6 Required acts
- § 13:7 Required reports
- § 13:8 Parental notice of abortion
- § 13:9 Freedom of access to clinic entrances
- § 13:10 Partial birth abortion

**IV. CHILD ABUSE OR NEGLECT**

- § 13:11 Introduction
- § 13:12 Reporting requirements
- § 13:13 Temporary protective custody
- § 13:14 Medical neglect of newborns
- § 13:15 Liability and immunity in connection with reporting
- § 13:16 Liability for failure to make report
- § 13:17 Disposition of reports

§ 13:18 Effects of religious beliefs

## **V. ELDER ABUSE, NEGLECT AND EXPLOITATION**

- § 13:19 Generally
- § 13:20 Reporting requirements
- § 13:21 Liability and immunity
- § 13:22 Liability for failure to report

## **VI. DEATH**

- § 13:23 Generally
- § 13:24 Registration
- § 13:25 Organ donation
- § 13:26 Organ procurement agency pre-consent preservation of suitable organs
- § 13:27 Organ donation by HIV-infected individuals
- § 13:28 Coroner's investigations
- § 13:29 Maternal death
- § 13:30 Autopsy

## **VII. COMMUNICABLE DISEASES AND OTHER CONDITIONS**

- § 13:31 Introduction
- § 13:32 Communicable diseases
- § 13:33 Noncommunicable diseases
- § 13:34 Cancer
- § 13:35 Adverse pregnancy outcomes
- § 13:36 Occupational disease information
- § 13:37 Lead poisoning
- § 13:38 Reye's syndrome
- § 13:39 Immunizations
- § 13:40 Alzheimer's disease
- § 13:41 Lyme disease

## **VIII. SEXUALLY TRANSMISSIBLE DISEASES**

- § 13:42 Generally
- § 13:43 AIDS and HIV infection
- § 13:44 AIDS and HIV reporting
- § 13:45 Other sexually transmissible diseases and laboratory results
- § 13:46 Unique legal requirements for HIV and AIDS
- § 13:47 Health care workers—AIDS and HIV infection

## **IX. OTHER CIRCUMSTANCES**

- § 13:48 Seriously ill newborns

## TABLE OF CONTENTS

- § 13:49 Abused or neglected nursing home residents
- § 13:50 Marriage
- § 13:51 Sexual assault survivors examination and treatment
- § 13:52 Reports of criminal acts
- § 13:53 Other circumstances requiring reports
- § 13:54 Testing for driving under the influence of alcohol or other drugs

## **CHAPTER 14. CONFIDENTIALITY AND PRIVACY**

### **I. OVERVIEW**

- § 14:1 Generally

### **II. CONFIDENTIALITY OF REPORTED INFORMATION; IMMUNITY FOR REPORTING**

- § 14:2 Generally
- § 14:3 Health care statistics
- § 14:4 Medical studies data
- § 14:5 The Illinois Freedom of Information Act
- § 14:6 Mandatory government reports
- § 14:7 Communicable diseases and public health emergencies
- § 14:8 Information relating to sexually transmitted diseases and HIV
- § 14:9 Cancer, adverse pregnancy outcomes, and occupational diseases
- § 14:10 Data for use in research
- § 14:11 Genetic information
- § 14:12 Biometric data
- § 14:13 Mental Health Code: Illinois Mental Health and Developmental Disabilities Confidentiality Act
- § 14:14 Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Illinois state law
- § 14:15 Health Insurance Portability and Accountability Act of 1996 (HIPAA) preemption of state law under the Illinois Mental Health and Developmental Disabilities Confidentiality Act (IMHDDCA)
- § 14:16 Health Insurance Portability and Accountability Act of 1996 (HIPAA)—Generally
- § 14:17 —Applicability
- § 14:18 —Standards for Electronic Transactions
- § 14:19 —The Privacy Rules
- § 14:20 —The Security Rule
- § 14:21 —Penalties
- § 14:22 —Research resources

### **III. PRIVACY AND SECURITY STANDARDS UNDER THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

- § 14:23 Health Information Technology for Economic and Clinical Health Act (HITECH)—Generally
- § 14:24 —Security provisions
- § 14:25 —Breach notification
- § 14:26 —Disclosures and restrictions on PHI
- § 14:27 —Enforcement and penalties
- § 14:28 HIPAA omnibus rule

### **IV. MOBILE TECHNOLOGIES AND SOCIAL MEDIA**

- § 14:29 Interoperability, the American Reinvestment & Recovery Act, the 21st Century Cures Act
- § 14:30 Social media and mobile apps
- § 14:31 Social media—FDA guidance

## **CHAPTER 15. EMERGING ISSUES IN LAW AND HEALTH CARE**

### **I. IN GENERAL**

- § 15:1 Overview

### **II. TELEHEALTH AND TELEMEDICINE**

- § 15:2 Telehealth and Telemedicine

### **III. PHYSICIAN ASSISTED DYING**

- § 15:3 Introduction
- § 15:4 Forgoing life-sustaining treatment as ethically, and subsequently legally, distinct from assisted dying
- § 15:5 Court challenges to statutes prohibiting assisted suicide
- § 15:6 Physician assisted dying—The state of the law in Illinois
- § 15:7 State laws authorizing physician assisted dying; the Oregon experience
- § 15:8 Other states with lawmakers sponsoring death-with-dignity legislation
- § 15:9 Assisted dying—Canada’s experience
- § 15:10 Physician assisted dying as subjecting physicians to adverse governmental action
- § 15:11 Conclusion

### **IV. ARTIFICIAL INTELLIGENCE (“AI”)**

- § 15:12 Introduction

TABLE OF CONTENTS

- § 15:13 Definitions and comparisons of AI terminology
- § 15:14 Examples of existing AI healthcare technology
- § 15:15 AI healthcare technology expected in the future
- § 15:16 Risks, challenges, and opportunities for AI in healthcare
- § 15:17 Regulating the use of AI in clinical settings
- § 15:18 Conclusion

**V. ANESTHESIA SERVICES IN HOSPITALS AND  
AMBULATORY SURGICAL TREATMENT  
CENTERS**

- § 15:19 Use of certified anesthesiologist assistants in Illinois hospitals and ambulatory surgery treatment centers

**PART D. PRACTICE  
CONSIDERATIONS**

**CHAPTER 16. ORGANIZATIONAL AND  
RELATED ASPECTS OF MEDICAL  
PRACTICE**

**I. IN GENERAL**

- § 16:1 Overview
- § 16:2 Sole proprietorship
- § 16:3 Partnership
- § 16:4 Professional corporation
- § 16:5 —Medical corporation
- § 16:6 —Professional service corporation
- § 16:7 —Limited liability company—Professional limited liability company
- § 16:8 Professional association
- § 16:9 Corporate practice of medicine doctrine and fee splitting prohibition

**II. CORPORATE GOVERNANCE AND  
MAINTENANCE ISSUES FOR PHYSICIAN  
PRACTICES**

- § 16:10 Generally
- § 16:11 Organizational documents
- § 16:12 Effectuating resolutions
- § 16:13 Ongoing corporate matters
- § 16:14 Annual corporate matters
- § 16:15 Financial matters

- § 16:16 Licensing and credentialing matters
- § 16:17 Third party payor agreements
- § 16:18 Professional liability insurance and risk management
- § 16:19 Physician practice—Corporate maintenance checklist

## **CHAPTER 17. PHYSICIAN SELF-REFERRAL RESTRICTIONS**

### **I. IN GENERAL**

- § 17:1 Introduction
- § 17:2 State restrictions on physician self-referrals
- § 17:3 Office and group practice exceptions
- § 17:4 Demonstrated community need exception
- § 17:5 Publicly traded entity exception
- § 17:6 Insurance plan exceptions
- § 17:7 HFSRB opinions
- § 17:8 American Medical Association ethical guidance

### **II. STARK LAW**

#### **A. IN GENERAL**

- § 17:9 Federal restrictions on physician self-referrals
- § 17:10 Stark Law sanctions for violations
- § 17:11 Stark Law general exceptions
- § 17:12 Stark Law group practice definition
- § 17:13 Stark Law specific ownership exceptions

#### **B. SPECIFIC COMPENSATION ARRANGEMENT EXCEPTIONS**

- § 17:14 Generally
- § 17:15 Rental
- § 17:16 Services
- § 17:17 Recruitment
- § 17:18 One time transactions
- § 17:19 Hospital billing
- § 17:20 Payments by a physician
- § 17:21 Charity
- § 17:22 Nonmonetary compensation
- § 17:23 Fair market value compensation
- § 17:24 Medical staff incidental benefit
- § 17:25 Risk sharing
- § 17:26 Compliance training
- § 17:27 Indirect compensation
- § 17:28 Referral services
- § 17:29 Obstetrical malpractice subsidies

## TABLE OF CONTENTS

- § 17:30 Professional courtesy
- § 17:31 Hospital retention payments
- § 17:32 Health information systems
- § 17:33 Electronic health records
- § 17:34 Assistance to non-physician practitioner
- § 17:35 Timeshare arrangements
- § 17:36 Limited remuneration to a physician
- § 17:37 Value-based arrangements
- § 17:38 Cybersecurity technology and related services
- § 17:39 Stark Law advisory opinions

## **CHAPTER 18. FRAUD AND ABUSE: MEDICAID, MEDICARE, AND OTHER FEDERAL PROGRAMS**

### **I. IN GENERAL**

- § 18:1 Introduction

### **II. FALSE CLAIMS**

- § 18:2 Generally
- § 18:3 False Claims Act: Civil penalties
- § 18:4 Civil penalty under Illinois law
- § 18:5 When is a claim false or fraudulent?
- § 18:6 When must a claim be returned?
- § 18:7 A claim for U.S. government funds
- § 18:8 Knowledge of the claim's falsity or fraudulence
- § 18:9 Conclusion
- § 18:10 Health Care Fraud Statute: Criminal penalties
- § 18:11 Other statutes

### **III. KICKBACKS**

- § 18:12 Kickbacks—Generally
- § 18:13 Intent to induce a referral
- § 18:14 Scienter: what does “willfully” mean?
- § 18:15 Safe harbors
- § 18:16 Equipment and space rental
- § 18:17 Personal services
- § 18:18 Practitioner recruitment
- § 18:19 Employment
- § 18:20 Ambulatory surgery centers
- § 18:21 Value-based arrangements
- § 18:22 Mental health programs for physicians and other healthcare providers
- § 18:23 Exclusion

§ 18:24 Attorney liability

## **CHAPTER 19. ANTITRUST**

- § 19:1 Introduction
- § 19:2 Antitrust development and its application to healthcare
- § 19:3 Sherman Act Section One
- § 19:4 Price fixing—Per se treatment
- § 19:5 Market allocation—Per se treatment
- § 19:6 Boycotts—Per se “quick look” and rule of reason
- § 19:7 Tying arrangements—Rule of reason
- § 19:8 Other recognized restraints—Leveraging medical staff access, associations and accreditation
- § 19:9 Sherman Act Section Two
- § 19:10 The Clayton Act—Health care entity mergers
- § 19:11 Joint ventures
- § 19:12 Antitrust and physician-hospital organizations
- § 19:13 Antitrust and management services organizations
- § 19:14 Antitrust and integrated delivery systems
- § 19:15 Antitrust Safety Zones
- § 19:16 Private party standing
- § 19:17 Antitrust defenses

## **CHAPTER 20. HEALTH CARE PROFESSIONAL ADVERTISING**

- § 20:1 Introduction
- § 20:2 Historical background
- § 20:3 Current ethical provisions
- § 20:4 First Amendment and physician advertising
- § 20:5 Federal Trade Commission and physician advertising
- § 20:6 Regulation of healthcare professional advertising in Illinois
- § 20:7 Illinois judicial review; case illustrations
- § 20:8 Advertising alternative health care systems

## **CHAPTER 21. PHYSICIAN EMPLOYMENT CONTRACTS**

- § 21:1 General physician employment considerations
- § 21:2 Common specific physician employment contract clauses
- § 21:3 Geographic restrictive covenants in medical practice
- § 21:4 Non-solicitation and other post-employment restrictions
- § 21:5 Important statutory considerations impacting all post-employment restrictions

TABLE OF CONTENTS

§ 21:6 Restrictive covenants in medical practice—Case illustrations

**CHAPTER 22. PHYSICIAN MANAGED CARE SERVICES CONTRACTS**

§ 22:1 Introduction  
§ 22:2 Parties to a managed care contract  
§ 22:3 Illinois-specific contracting procedures  
§ 22:4 Payment models and model-specific issues  
§ 22:5 Other issues arising out of payments  
§ 22:6 Utilization review  
§ 22:7 Physician credentialing  
§ 22:8 Most-favored nation clauses  
§ 22:9 All products clauses  
§ 22:10 Silent PPOs  
§ 22:11 Amendments  
§ 22:12 Termination of contracts  
§ 22:13 No written contract  
§ 22:14 Litigation involving MCE claims processing

**CHAPTER 22A. ILLINOIS COVID-19 LEGAL RESPONSE**

§ 22A:1 Introduction  
§ 22A:2 Overview of the gubernatorial disaster proclamations  
§ 22A:3 Details of the proclamations  
§ 22A:4 Executive orders  
§ 22A:5 Emergency rules  
§ 22A:6 Court cases challenging governor's authority  
§ 22A:7 Conclusion

**Volume 22**

**PART E. HEALTH CARE FINANCE & REIMBURSEMENT**

**CHAPTER 23. PHYSICIAN REIMBURSEMENT AND BILLING**

**I. INTRODUCTION**

§ 23:1 Overview

## **II. MEDICARE PART B**

### **§ 23:2 Medicare Part B overview**

#### **A. PART B COVERED ITEMS AND SERVICES**

- § 23:3 Generally
- § 23:4 Physicians' services
- § 23:5 Chronic care management (CCM)
- § 23:6 Advanced Primary Care Management (APCM)
- § 23:7 Behavioral Health Integration (BHI)
- § 23:8 Physician assistants
- § 23:9 Nurses
- § 23:10 "Incident to" services and supplies
- § 23:11 Telehealth services
- § 23:12 Remote patient monitoring and other communication technology-based services
- § 23:13 Outpatient physical and occupational therapy
- § 23:14 Diagnostic tests
- § 23:15 Independent diagnostic testing facilities
- § 23:16 Medically reasonable and necessary standard
- § 23:17 Part B exclusions

#### **B. ESTABLISHING AND MAINTAINING PART B BILLING PRIVILEGES**

- § 23:18 Supplier enrollment in Medicare
- § 23:19 National provider identifier
- § 23:20 Revocation or deactivation of billing privileges

#### **C. ASSIGNMENT, PARTICIPATION AND REASSIGNMENT**

- § 23:21 Assignment of Part B claims
- § 23:22 Participation
- § 23:23 Reassignment prohibition
- § 23:24 Reassignment exceptions
- § 23:25 —Payment to a billing agent
- § 23:26 —Contractual arrangements
- § 23:27 —Reciprocal billing and fee-for-time compensation (locum tenens) arrangements
- § 23:28 Consequences of payment to ineligible recipient

#### **D. PART B REIMBURSEMENT**

- § 23:29 Part B payment amount
- § 23:30 Fees in excess of supplier's usual charges
- § 23:31 Medicare anti-markup restriction
- § 23:32 Illinois anti-markup restriction

## TABLE OF CONTENTS

- § 23:33 Deductibles, copayments and coinsurance
- § 23:34 Submission of claims
- § 23:35 Advance beneficiary notices
- § 23:36 Overpayments
- § 23:37 Appeals

### **E. OPTING-OUT OF MEDICARE**

- § 23:38 Introduction
- § 23:39 Effects
- § 23:40 Physicians and practitioners eligible to opt-out
- § 23:41 Procedure
- § 23:42 Private contracts
- § 23:43 Opt-out period
- § 23:44 Renewal and termination
- § 23:45 Failure to properly opt-out
- § 23:46 Failure to maintain opt-out status

### **III. ILLINOIS HEALTH CARE REIMBURSEMENT PROGRAMS**

- § 23:47 Medical assistance program
- § 23:48 Primary care case management program
- § 23:49 Children's health insurance program
- § 23:50 Covering all kids health insurance program

### **IV. BILLING AND COLLECTION PROCEDURES**

- § 23:51 Billing and collection procedures
- § 23:52 —Reimbursement amounts and balance billing
- § 23:53 —Surprise billing—No Surprises Act
- § 23:54 —Illinois out-of-network statute
- § 23:55 —Explanation of benefits
- § 23:56 —Illinois timely payment statute
- § 23:57 —ERISA
- § 23:58 Health Care Liens
- § 23:59 Coordination of benefits
- § 23:60 Workers' compensation

### **V. CONCIERGE MEDICINE (RETAINER PRACTICE)**

- § 23:61 Introduction
- § 23:62 GAO study
- § 23:63 OIG alert
- § 23:64 AMA ethical guidelines
- § 23:65 Third-party payers

### **VI. BILLING COMPLIANCE**

- § 23:66 Sanctions for improper billing

- § 23:67 Billing compliance programs
- § 23:68 Coding and billing risk areas
- § 23:69 —Forgiveness or waiver of copayments or coinsurance
- § 23:70 Billing companies

## **CHAPTER 24. ILLINOIS HOSPITAL PATIENT BILLING REQUIREMENTS**

### **I. ILLINOIS FAIR PATIENT BILLING ACT**

- § 24:1 Overview of *Illinois Fair Patient Billing Act*
- § 24:2 Applicability
- § 24:3 Patient notification
- § 24:4 Hospital bill information
- § 24:5 Hospital bill inquiries
- § 24:6 Pursuing collection action
- § 24:7 Patient responsibilities
- § 24:8 Notification concerning out-of-network providers
- § 24:9 Enforcement of the FPBA and penalties

### **II. ILLINOIS HOSPITAL UNINSURED PATIENT DISCOUNT ACT**

- § 24:10 Overview of Illinois Hospital Uninsured Patient Discount Act
- § 24:11 Eligibility
- § 24:12 Discount
- § 24:13 Maximum Collectible Amount
- § 24:14 Patient Responsibility
- § 24:15 Exemptions and limitations
- § 24:16 Enforcement
- § 24:17 Home Rule

## **CHAPTER 25. IMPLICATIONS OF FEDERAL TAX-EXEMPTION PRINCIPLES FOR HOSPITAL-PHYSICIAN RELATIONSHIPS**

- § 25:1 Introduction
- § 25:2 Applicable federal tax-exemption principles—General overview
- § 25:3 Maintaining exempt status under Section 501(c)(3) of the Code
- § 25:4 Prohibition against private inurement generally
- § 25:5 Prohibition against excess private benefit generally
- § 25:6 Intermediate sanctions
- § 25:7 Disqualified persons
- § 25:8 Excess benefit transactions; reasonableness of compensation; “one-bite” rule

## TABLE OF CONTENTS

§ 25:9	Evidence of intent to treat payments as compensation
§ 25:10	Timing of reasonableness determination
§ 25:11	Date of occurrence
§ 25:12	Valuation of economic benefits other than compensation
§ 25:13	Rebuttable presumption of reasonableness
§ 25:14	Condition one: Approval process
§ 25:15	Condition two: Comparability of data
§ 25:16	Condition three: Documentation
§ 25:17	When the rebuttable presumption arises
§ 25:18	Application of rebuttable presumption procedures outside private inurement and excess benefit transactions
§ 25:19	Attribution to exempt organization of activities of its taxable affiliates
§ 25:20	Unrelated business income
§ 25:21	Joint ventures between exempt organizations and taxable participants
§ 25:22	Technology donations
§ 25:23	Tax exempt financing
§ 25:24	Private use safe harbor under Revenue Procedure 2017-13
§ 25:25	Other tax-exempt financing considerations
§ 25:26	Transactions between exempt healthcare organizations and physicians
§ 25:27	Fair market value of medical practice assets purchased by or sold to exempt healthcare organization
§ 25:28	Valuation methodologies
§ 25:29	Effect of compensation formula on valuation
§ 25:30	Reasonable compensation
§ 25:31	Incentive compensation
§ 25:32	Deferred compensation and severance arrangements
§ 25:33	Physician recruitment incentives
§ 25:34	Other IRS rulings concerning recruitment arrangements
§ 25:35	Applicability of intermediate sanctions
§ 25:36	Physicians participation in governance of exempt healthcare organizations
§ 25:37	Practical suggestions
§ 25:38	—Professional service agreements
§ 25:39	—Recruitment arrangements
§ 25:40	— —Incentives for physicians affiliating with existing practice
§ 25:41	— —Income guarantee
§ 25:42	— —Loans and repayment
§ 25:43	—Below-market/free office space or equipment

- § 25:44 —Tax-exempt financing
- § 25:45 —Signing bonus
- § 25:46 Other expenses
- § 25:47 Physician practice management
- § 25:48 Joint ventures

## **CHAPTER 26. HOSPITAL PROPERTY TAX AND SALES TAX EXEMPTIONS**

- § 26:1 Scope of Chapter

### **I. OVERVIEW OF HOSPITAL PROPERTY TAX EXEMPTIONS**

- § 26:2 Constitutional authorization and limitation
- § 26:3 History of property tax exemptions for Illinois not-for-profit hospitals
- § 26:4 Overview of the exemption for not-for-profit hospitals contained in Section 15-86 of the Property Tax Code

### **II. SEEKING PROPERTY TAX EXEMPTIONS UNDER SECTION 15-86 OF THE PROPERTY TAX CODE**

- § 26:5 Procedure for obtaining property tax exemptions
- § 26:6 Completing the PTAX-300-H property tax exemption application

### **III. SATISFACTION OF THE CONSTITUTIONAL CHARITABLE USE REQUIREMENT**

- § 26:7 Use of the “*Korzen* factors” to determine satisfaction of the statutory and constitutional requirements for entitlement to charitable exemptions under Section 15-65 of the Property Tax Code
- § 26:8 *Oswald’s* discussion of the constitutional charitable use requirement
- § 26:9 Heart of the controversy regarding satisfaction of the constitutional charitable use requirement

### **IV. SPECIAL EXEMPTION ISSUES**

- § 26:10 Partial exemptions
- § 26:11 Ancillary uses

### **V. ALTERNATIVES TO ADMINISTRATIVE EXEMPTION APPLICATIONS AS MEANS OF ESTABLISHING EXEMPTIONS**

- § 26:12 Litigation for exemptions under Section 23-25(e)

TABLE OF CONTENTS

§ 26:13 Litigation for exemptions under Section 14-25

**VI. MAINTAINING AND EXTENDING HOSPITAL  
PROPERTY TAX EXEMPTIONS**

- § 26:14 Maintaining hospital property tax exemptions
- § 26:15 Required filing of annual affidavit and notice of  
change in ownership or use of exempt property
- § 26:16 Consequences of non-compliance with the statutory  
requirements
- § 26:17 Extending hospital property tax exemptions to  
additional years

**VII. OBTAINING AND RENEWING HOSPITAL  
SALES TAX EXEMPTIONS**

- § 26:18 Sales tax exemptions for not-for-profit hospitals
- § 26:19 Hospital sales tax exemptions—Generally
- § 26:20 —Criteria and application process
- § 26:21 —Renewal
- § 26:22 —Annual certificates
- § 26:23 —Additional practical issues

**VIII. EMERGING HOSPITAL EXEMPTION ISSUES**

- § 26:24 The road ahead: key issues and trends

**CHAPTER 27. WORKERS' COMPENSATION**

- § 27:1 Overview
- § 27:2 Medical treatment—Introduction
- § 27:3 —Choice of physician
- § 27:4 —Preferred provider program
- § 27:5 —Panel of physicians
- § 27:6 Medical examinations—Employer-requested medical  
examinations
- § 27:7 —Notice requirements
- § 27:8 —Commission-ordered impartial medical  
examinations
- § 27:9 Medical records—Production of records and  
subpoenas
- § 27:10 —Temporary total disability benefits
- § 27:11 —HIPAA
- § 27:12 —Admissibility of medical records
- § 27:13 —Emergency hearings
- § 27:14 Medical testimony
- § 27:15 AMA Guides and the rating of impairment
- § 27:16 The medical fee schedule—Introduction
- § 27:17 —Fee schedule mechanics

- § 27:18 —Medical implants
- § 27:19 —Prescriptions
- § 27:20 —Out-of-state medical treatment
- § 27:21 —Conclusion
- § 27:22 Billing and payment—Direct billing for claims
- § 27:23 —Balance billing prohibition
- § 27:24 —Electronic claims
- § 27:25 Utilization review—Introduction
- § 27:26 —Registration and regulation of utilization review programs
- § 27:27 —Process
- § 27:28 —Commission review
- § 27:29 Anti-fraud provisions

## **CHAPTER 28. COLLECTIVE BARGAINING UNDER THE NLRA IN THE HEALTH CARE INDUSTRY**

### **I. IN GENERAL**

- § 28:1 Introduction
- § 28:2 A brief overview of the National Labor Relations Act

### **II. DETERMINATION OF APPROPRIATE BARGAINING UNIT**

- § 28:3 Generally
- § 28:4 *St. Francis Hospital* and the disparity-of-interest standard
- § 28:5 Rulemaking and a return to eight basic units
- § 28:6 —Extraordinary circumstances
- § 28:7 —Combined units; existing units; residual units
- § 28:8 —Other hospitals and health care facilities
- § 28:9 —Additional issues

### **III. ELIGIBILITY OF CERTAIN HOSPITAL PERSONNEL FOR MEMBERSHIP IN BARGAINING UNITS OR COLLECTIVE BARGAINING**

- § 28:10 Nurses as supervisors
- § 28:11 Physicians and residents as employees

### **IV. SPECIAL BARGAINING OBLIGATIONS AND NOTICE PROVISIONS FOR STRIKING IN THE HEALTH CARE INDUSTRY**

- § 28:12 Generally

## TABLE OF CONTENTS

- § 28:13 Exclusions from notice requirements
- § 28:14 Conciliation
- § 28:15 Loss of protected status as sanction for violations

## V. MISCELLANEOUS MATTERS

- § 28:16 Employer property access restrictions—Applicable to employees
- § 28:17 —Applicable to non-employees
- § 28:18 Employee no-solicitation/no-distribution rules
- § 28:19 —Bulletin boards
- § 28:20 —Union insignia, buttons, and stickers
- § 28:21 Employee participation committees

## PART F. LIABILITY AND LITIGATION

### CHAPTER 29. LIABILITY LAW

- § 29:1 Overview
- § 29:2 Contract liability
- § 29:3 Tort liability
- § 29:4 Vicarious liability
- § 29:5 Wrongful death
- § 29:6 —Wrongful Death Act distinguished from Survival Act
- § 29:7 —Requirements to maintain cause of action under the Act
- § 29:8 —Decedent able to maintain action to recover prior to death
- § 29:9 —Personal representative brings action
- § 29:10 —Existence of beneficiaries
- § 29:11 —Damages
- § 29:12 —Defenses
- § 29:13 — —Statute of limitations
- § 29:14 — —Assumption of risk; consent
- § 29:15 — —Comparative negligence of decedent
- § 29:16 — —Negligence of beneficiaries
- § 29:17 Hospital corporate liability
- § 29:18 Negligent credentialing
- § 29:19 Managed care liability—Introduction
- § 29:20 —Aetna Health Inc. v. Davila/Cigna Corp. v. Calad
- § 29:21 —Illinois case law: Managed care and ERISA preemption
- § 29:22 —Pre-Davila and Calad: Illinois managed care law/non-ERISA cases
- § 29:23 —ERISA's preemption of Illinois law

- § 29:24 —Cases after Davila and Calad: ERISA Preemption of Illinois law
- § 29:25 —The viability of state law reimbursement claims against managed care entities
- § 29:26 —Conclusion
- § 29:27 Products liability
- § 29:28 —Limitation of liability
- § 29:29 —Defective medical devices
- § 29:30 —Reporting of adverse medical events
- § 29:31 —Reuse of single-use devices
- § 29:32 —Defective drugs
- § 29:33 —Market share and alternative liability theories
- § 29:34 —Medical device security
- § 29:35 Birth-related causes of action
- § 29:36 —Wrongful pregnancy
- § 29:37 —Wrongful birth
- § 29:38 —Wrongful life

## **CHAPTER 30. MEDICAL MALPRACTICE LIABILITY**

### **I. PHYSICIAN-PATIENT RELATIONSHIP**

- § 30:1 Generally
- § 30:2 Examination for party other than patient
- § 30:3 Effect of payment by another or of no payment
- § 30:4 Duty owed to non-patient third parties
- § 30:5 Duration of duty

### **II. STANDARD OF CARE**

- § 30:6 Generally
- § 30:7 Locality rule
- § 30:8 Specialists
- § 30:9 Schools of medicine
- § 30:10 Legal imposition of a standard of care

### **III. PHYSICIAN'S DUTIES: SPECIFIC STANDARDS OF CARE**

- § 30:11 Introduction
- § 30:12 Examination of patients
- § 30:13 Care and treatment of patients
- § 30:14 Consultation and referral
- § 30:15 Unnecessary surgery
- § 30:16 Innovative therapy
- § 30:17 Medical records—Documenting adherence to the standard of care

TABLE OF CONTENTS

- § 30:18 —Alteration of medical records
- § 30:19 —Loss or destruction of medical records
- § 30:20 —Retention of records
- § 30:21 —Access to medical records

**IV. CAUSATION**

- § 30:22 Generally

**V. DAMAGES**

- § 30:23 Generally
- § 30:24 Compensatory damages
- § 30:25 Punitive damages

**VI. CONSENT AND INFORMED CONSENT**

**A. CONSENT TO TREATMENT**

- § 30:26 Introduction
- § 30:27 Consent to treatment
- § 30:28 Medical emergencies
- § 30:29 Capacity to consent
- § 30:30 Refusal of consent to health care
- § 30:31 Minors

**B. INFORMED CONSENT**

- § 30:32 Introduction
- § 30:33 Scope of disclosure obligation
- § 30:34 Causation
- § 30:35 Exceptions to disclosure requirements
- § 30:36 Obtaining and documenting consent

**CHAPTER 31. MEDICAL MALPRACTICE  
LITIGATION—PRETRIAL**

**I. INTRODUCTION**

- § 31:1 Overview of pretrial considerations
- § 31:2 Pretrial case management

**II. PLEADINGS**

- § 31:3 Pleadings—Generally
- § 31:4 —Affidavit of Merit, Complaint, and Answer
- § 31:5 Respondents in discovery
- § 31:6 Motions addressed to the pleadings

**III. DISCOVERY**

- § 31:7 Generally

- § 31:8 Written interrogatories
- § 31:9 Production of documents and objects
- § 31:10 Physical or mental examination
- § 31:11 Pretrial discovery of opinion witnesses
- § 31:12 Depositions
- § 31:13 Consequences of refusal to comply with discovery rules
- § 31:14 Subpoena
- § 31:15 Physician-patient privilege
- § 31:16 Medical and hospital records; admissibility and privilege

## **CHAPTER 32. MALPRACTICE TRIAL CONSIDERATIONS**

### **I. BURDEN OF PROOF**

- § 32:1 Generally
- § 32:2 Expert testimony requirement
- § 32:3 Circumstances in which expert testimony is unnecessary
- § 32:4 Res ipsa loquitur

### **II. WITNESSES**

- § 32:5 Expert testimony—Generally
- § 32:6 Lay and expert testimony
- § 32:7 Qualifications of the expert
- § 32:8 Participation of the expert witness
- § 32:9 Examination of the expert witness
- § 32:10 Opinion testimony
- § 32:11 Textbooks and other medical publications
- § 32:12 Adverse witnesses

### **III. DEFENSES**

- § 32:13 Defenses—Generally
- § 32:14 Statute of limitations
- § 32:15 Release and satisfaction
- § 32:16 Compliance with the standard of care
- § 32:17 Negligence of the patient
- § 32:18 Miscellaneous statutory defenses

### **IV. CONTRIBUTION AND INDEMNITY**

- § 32:19 Contribution among joint tortfeasors
- § 32:20 Joint and several liability
- § 32:21 Liability in tort—Inclusions, exclusions and limitations

TABLE OF CONTENTS

- § 32:22 *Pro rata* share of common liability
- § 32:23 Good faith settlements
- § 32:24 Timeliness of contribution actions
- § 32:25 Indemnity and equitable apportionment

**V. COUNTERSUITS**

- § 32:26 Generally

**PART G. BIOETHICS AND HEALTH  
POLICY**

**CHAPTER 33. REPRODUCTION**

- § 33:1 Overview
- § 33:2 Reproduction
- § 33:3 Assisted reproduction
- § 33:4 —Donor insemination
- § 33:5 —In vitro fertilization
- § 33:6 —Donor oocytes and embryos
- § 33:7 —Preimplantation genetic diagnosis of embryos
- § 33:8 —Cryopreservation of gametes and embryos
- § 33:9 Surrogate motherhood
- § 33:10 Contraception
- § 33:11 Abortion
- § 33:12 Sterilization
- § 33:13 Reproductive potential causes of action

**CHAPTER 34. DEATH, DYING, AND  
DECISION-MAKING**

- § 34:1 Withholding/withdrawing life-sustaining treatment
- § 34:2 Decision-making and advance directives
- § 34:3 Patient Self-Determination Act
- § 34:4 Living Will Act
- § 34:5 Powers of Attorney for Health Care Law
- § 34:6 Mental Health Treatment Preference Declaration Act
- § 34:7 Do-Not-Resuscitate orders
- § 34:8 Health Care Surrogate Act
- § 34:9 Futile treatment
- § 34:10 —Meaning of “futility”
- § 34:11 —Factors in futility debate
- § 34:12 —Futility and the law

**CHAPTER 35. ORGAN AND TISSUE  
TRANSPLANTATION-ANATOMICAL GIFTS**

- § 35:1 Introduction

- § 35:2 Illinois Anatomical Gift Act
- § 35:3 Illinois Vehicle Code
- § 35:4 Federal organ procurement laws
- § 35:5 Ethical and legal consideration with financial incentives for organ donation
- § 35:6 Fetal tissue transplant research
- § 35:7 Placental/umbilical cord blood
- § 35:8 Anencephalic infants
- § 35:9 Artificial and animal organs
- § 35:10 Allocation decisions

## **CHAPTER 36. BLOOD TRANSFUSION AND DONATION**

- § 36:1 Introduction
- § 36:2 Religious beliefs and blood transfusion
- § 36:3 —Some leading Illinois decisions
- § 36:4 Blood acquisition and screening of donors
- § 36:5 Screening of donated blood
- § 36:6 Removal of white blood cells (leukoreduction)
- § 36:7 Directed and autologous donations
- § 36:8 FDA regulation of the blood supply
- § 36:9 Blood transfusions and liability—Pre-1985 HIV infections and the federal response
- § 36:10 —Theories of liability and the effect of Illinois statutes
- § 36:11 —Some leading Illinois decisions
- § 36:12 Blood transfusions and forensic DNA evidence

## **CHAPTER 37. RESEARCH INVOLVING HUMAN SUBJECTS**

### **I. INTRODUCTION**

- § 37:1 Introduction

### **II. ABUSES IN HUMAN SUBJECT RESEARCH; REGULATORY RESPONSES**

#### **A. IN GENERAL**

- § 37:2 Introduction
- § 37:3 American Medical Association guidelines
- § 37:4 Illinois law

#### **B. FEDERAL REGULATION, GENERALLY**

- § 37:5 Generally

## TABLE OF CONTENTS

- § 37:6 Institutional review boards
- § 37:7 —Composition, competence, and duties
- § 37:8 Decentralized clinical trials
- § 37:9 Risk/benefit analysis
- § 37:10 Artificial intelligence in clinical research
- § 37:11 Disclosure and consent requirements
- § 37:12 —Waiver
- § 37:13 Secondary use of data and big data research
- § 37:14 Institutional statements of principles applicable regardless of source of funding
- § 37:15 Criticisms of the federal regulatory scheme

### C. SPECIAL REGULATIONS FOR PARTICULAR CLASSES OF PERSONS, ENTITIES, OR RESEARCH

- § 37:16 Generally
- § 37:17 Children
- § 37:18 Prisoners
- § 37:19 Mentally ill persons
- § 37:20 Women and minorities
- § 37:21 Fetuses and embryos
- § 37:22 Stem cell research

## CHAPTER 38. QUALITY OF AND ACCESS TO HEALTH CARE

### I. IN GENERAL

- § 38:1 Introduction
- § 38:2 Health statistics; the standing of the United States internationally
- § 38:3 Differences in health status between segments of the U.S. population
- § 38:4 —Access to care and services
- § 38:5 Access to health care and insurance as affecting health status
- § 38:6 The ranks of the uninsured

### II. CURRENT FEDERAL AND STATE INITIATIVES ADDRESSING ACCESS ISSUES

- § 38:7 Introduction
- § 38:8 Medicaid
- § 38:9 The State Children’s Health Insurance Program
- § 38:10 The Hill-Burton and Emergency Medical Treatment and Active Labor Acts
- § 38:11 Community benefits required of tax-exempt hospitals

- § 38:12 The Health Insurance Portability and Accountability Act

### **III. HEALTH CARE REFORMS**

#### **A. HEALTH INSURANCE COVERAGE**

- § 38:13 Universal health care and a public option  
§ 38:14 Adoption of Healthcare Information Technology

#### **B. QUALITY OF HEALTH CARE**

- § 38:15 Introduction  
§ 38:16 Outcome, effectiveness, and appropriateness research  
§ 38:17 Clinical practice guidelines  
§ 38:18 Reduction of medical errors  
§ 38:19 Additional IOM reports and recommendations  
§ 38:20 Market-oriented models  
§ 38:21 Pay for performance  
§ 38:22 Private initiatives

### **IV. HEALTH REFORM LEGISLATION**

- § 38:23 Patient Protection and Affordable Care Act  
§ 38:24 Inflation Reduction Act  
§ 38:25 One Big Beautiful Bill Act—Medicaid impacts

### **V. SUMMARY AND CONCLUSION**

- § 38:26 Generally

#### **Table of Laws and Rules**

#### **Table of Cases**

#### **Index**