

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/31/03*

# A Bill

HOUSE BILL 2574

5 By: Representative Ledbetter  
6  
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## For An Act To Be Entitled

9 AN ACT TO REQUIRE THE ARKANSAS STATE MEDICAL  
10 BOARD TO POST IN ITS WEBSITE THE NAMES OF  
11 PHYSICIANS WHO HAVE BEEN THE SUBJECT OF  
12 MALPRACTICE COMPLAINTS, SETTLEMENTS, AND  
13 VERDICTS; AND FOR OTHER PURPOSES.  
14

## Subtitle

15 AN ACT TO REQUIRE THE ARKANSAS STATE  
16 MEDICAL BOARD TO POST IN ITS WEBSITE THE  
17 NAMES OF PHYSICIANS WHO HAVE BEEN THE  
18 SUBJECT OF MALPRACTICE COMPLAINTS,  
19 SETTLEMENTS, AND VERDICTS.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 17-95-303 is amended to read as follows:  
26 17-95-303. Powers and duties.

27 The Arkansas State Medical Board shall:

28 (1) Make and adopt all rules, regulations, and bylaws not inconsistent  
29 with the laws of this state or of the United States and necessary or  
30 convenient to perform the duties and to transact the business required by  
31 law;

32 (2) Have authority to promulgate and put into effect such rules and  
33 regulations as are necessary to carry out the purposes of the Arkansas  
34 Medical Practices Act, §§ 17-95-201 - 17-95-207, 17-95-301 - 17-95-305, and  
35 17-95-401 - 17-95-411, and the intentions expressed therein;

36 (3) Have authority to employ attorneys to represent the board in all



1 legal matters at a compensation approved by the board. Contracts for  
 2 employment of attorneys shall be filed by the Secretary of the Arkansas State  
 3 Medical Board with the Legislative Council. The board shall further have  
 4 authority to request the assistance of the Attorney General and the  
 5 prosecuting attorneys of Arkansas in such manner as it deems necessary and  
 6 proper;

7 (4) Have the authority to employ an executive secretary to carry out  
 8 the purposes and the mandates of the board and to supervise the other  
 9 employees of the board;

10 (5) Have the authority to employ a medical director, who shall hold a  
 11 valid license to practice medicine in this state, to evaluate medical issues  
 12 and to assist in investigations pending before the board;

13 (6) Have the power and authority to employ such secretarial and  
 14 administrative assistance as may be necessary to carry out the provisions of  
 15 the Arkansas Medical Practices Act, §§ 17-95-201 - 17-95-207, 17-95-301 - 17-  
 16 95-305, and 17-95-401 - 17-95-411, and the duties of the board to protect the  
 17 people of the State of Arkansas;

18 (7) Have the power and authority to employ one (1) or more inspectors  
 19 as may be necessary to carry out the provisions of the Arkansas Medical  
 20 Practices Act, §§ 17-95-201 - 17-95-207, 17-95-301 - 17-95-305, and 17-95-401  
 21 - 17-95-411, and the duties of the board to protect the people of the State  
 22 of Arkansas; ~~and~~

23 (8) Examine, as is provided for by law, all applicants for a license  
 24 to practice medicine in this state; and

25 (9) Make available to the public through the board's website the names  
 26 of physicians who have been the subject of malpractice claims, settlements,  
 27 and verdicts.

28  
 29 *SECTION 2. Arkansas Code Title 20, Chapter 7 is amended to read as*  
 30 *follows:*

31 17-95-701. Definition.

32 For purposes of this subchapter:

33 (1) "Applicant" means a person applying for licensure by the Arkansas  
 34 State Medical Board or the Arkansas State Board of Nursing;

35 (2) "Board" means the Arkansas State Medical Board;

36 (3) "Insurer" means malpractice insurance against legal liability of

1 the insured and against loss, damage, or expense incidental to a claim of  
2 liability including medical, hospital, and surgical benefits to injured  
3 persons, irrespective of legal liability of the insured, arising out of the  
4 death, injury, or disablement of any person or arising out of damage to the  
5 economic interest of any person, as the result of negligence in rendering  
6 expert or professional service; and

7 (4) "Practitioner" means a person licensed by the Arkansas State  
8 Medical Board or the Arkansas State Board of Nursing.

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10 17-95-702. Practitioner profile data base.

11 (a) The Arkansas State Medical Board shall:

12 (1) Develop a website format to compile uniformly any  
13 information submitted under this subchapter;

14 (2) Compile information submitted under this subchapter into a  
15 practitioner profile of the applicant submitting the information;

16 (4) Make the practitioner profile available to the public  
17 through the World Wide Web and other commonly used means of distribution;

18 (3) Promulgate rules to implement the provisions of this  
19 subchapter; and

20 (4) Report to the appropriate licensing board any failure of a  
21 practitioner or applicant to provide information required under this  
22 subchapter.

23 (b) The practitioner profile data base shall include, but not be  
24 limited to:

25 (1) A criminal history:

26 (A)(i) Listing any information required to be reported  
27 under § 20-7-403(7);

28 (ii) Indicating whether the information is or is not  
29 corroborated by a criminal history check conducted according to this  
30 subchapter;

31 (iii) Indicating whether the criminal information  
32 directly relates to the practitioner's ability to competently practice his or  
33 her profession; and

34 (iv) Including the statement: "The criminal history  
35 information, if any exists, may be incomplete; federal criminal history  
36 information is not available to the public."

1           (2)(A) Information relating to liability actions involving the  
2 practitioner within the previous ten (10) years reported to the board under §  
3 20-7-404.

4           (B) The claims information shall be reported in the  
5 context of comparing an individual practitioner's claims to the experience of  
6 other practitioners within the same specialty, or profession if the  
7 practitioner is not a specialist, to the extent the information is available  
8 to the State Board of Health.

9           (C) The claims information shall also include the  
10 following statement: "Settlement of a claim may occur for a variety of  
11 reasons that do not necessarily reflect negatively on the professional  
12 competence or conduct of the practitioner. A payment in settlement of a  
13 medical malpractice action or claim should not be construed as creating a  
14 presumption that medical malpractice has occurred."

15           (3)(A) Any other information that is a public record of any  
16 governmental entity and that relates to a practitioner's ability to  
17 competently practice his or her profession.

18           (B) However, the board shall consult with the appropriate  
19 licensing board before the information is included in his or her profile;

20           (4) The information required to be included in the data base  
21 under § 20-7-404.

22           (c) The board shall:

23           (1) Furnish the practitioner who is the subject of the profile a  
24 copy of the profile; and

25           (2) Allow the practitioner thirty (30) days to review the  
26 profile and to correct any factual inaccuracies.

27           (d) The practitioner profile data base may not include disciplinary  
28 action taken by a licensed hospital or an ambulatory surgical center.

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30           17-95-703. Practitioner profiles.

31           (a) Each practitioner and applicant shall, in conjunction with the  
32 renewal or initial issuance of his or her license, furnish the following  
33 information to the Arkansas State Medical Board:

34           (1) The name of each professional school the practitioner or  
35 applicant has attended, including, but not limited to:

36           (A) The dates of attendance;

1 (B) The date of graduation; and

2 (C) A description of all graduate professional education  
3 completed by the practitioner or applicant, excluding any coursework taken to  
4 satisfy professional licensure continuing education requirements;

5 (2) The name of each hospital at which the practitioner or  
6 applicant has privileges or is employed;

7 (3) The address at which the practitioner or applicant will  
8 primarily conduct his or her practice;

9 (4) Any certification that the practitioner or applicant has  
10 received from a specialty board that is recognized by the practitioner or  
11 applicant's licensing board;

12 (5) The year that the practitioner began his or her licensed  
13 professional practice;

14 (6) Any appointment to the faculty of a professional school that  
15 the practitioner or applicant currently holds and an indication as to whether  
16 the practitioner or applicant has had the responsibility for professional  
17 education within the most recent ten (10) years; and

18 (7)(A) A description of any criminal offense for which the  
19 practitioner or applicant has been found guilty or has pled guilty or nolo  
20 contendere.

21 (B) A criminal offense committed in another jurisdiction  
22 that would have been a felony or misdemeanor if committed in this state shall  
23 be reported.

24 (C) If the practitioner or applicant indicates that a  
25 criminal offense is under appeal and submits a copy of the notice of appeal  
26 for that criminal offense, the board shall state that the criminal offense is  
27 under appeal if the criminal offense is reported in the practitioner or  
28 applicant's profile.

29 (D) If the practitioner or applicant indicates to the  
30 board that a criminal offense is under appeal, the practitioner or applicant  
31 shall, upon disposition of the appeal, submit to the board a copy of the  
32 final written order of disposition; and

33 (8)(A)(i) A description of any final disciplinary action taken  
34 within the previous ten (10) years against the practitioner or applicant by  
35 the agency regulating the profession that the applicant is or has been  
36 licensed to practice, whether in this state or in any other jurisdiction, by

1 a specialty board that is recognized by the American Board of Medical  
2 Specialties, the American Osteopathic Association, or a similar national  
3 organization, or by a licensed hospital, health maintenance organization,  
4 prepaid health clinic, ambulatory surgical center, or nursing home.

5 (ii) However a final disciplinary action shall be  
6 reported by a hospital, prepaid health clinic, ambulatory surgical center, or  
7 nursing home only if the action resulted in the termination or revocation of  
8 a practitioner's hospital staff privileges for a medical disciplinary cause  
9 or reason.

10 (B) If the practitioner or applicant indicates that the  
11 disciplinary action is under appeal and submits a copy of the document  
12 initiating an appeal of the disciplinary action, the board shall state that  
13 the disciplinary action is under appeal if the disciplinary action is  
14 reported in the practitioner or applicant's profile.

15 (b) Each practitioner and applicant may submit additional information,  
16 including but not limited to:

17 (1) Information regarding publications in peer reviewed  
18 professional literature within the previous ten (10) years;

19 (2) Ongoing professional research projects;

20 (3) Information regarding professional or community service  
21 activities or awards; and

22 (4) Languages, other than English, used by the practitioner or  
23 applicant to communicate with patients and identification of any translating  
24 service that may be available at the place where the practitioner primarily  
25 conducts his or her practice.

26 (c) Any practitioner or applicant who has been licensed or has sought  
27 to become licensed in a healing art in another state shall furnish to the  
28 board, for the other state or states, the information required under  
29 subsection (a) of this section.

30 (d)(1) The information required under subsection (a) of this section  
31 shall be updated at least annually.

32 (2) Information regarding a criminal offense for which the  
33 practitioner or applicant has been found guilty or has pled guilty or nolo  
34 contendere shall be reported to the board within thirty (30) days after the  
35 entry of the finding or plea.

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1 17-95-704. Malpractice reports - Data reporting.

2 (a) Each insurer shall report to the State Insurance Department within  
3 thirty (30) days after a final disposition, any claim or action for damages  
4 for personal injuries claimed to have been caused by error, omission, or  
5 negligence in the performance of a practitioner or applicant's professional  
6 services or based on a claimed performance of professional services without  
7 consent, if the claim resulted in:

8 (1) A final judgment in any amount; or

9 (2) A settlement in any amount.

10 (b) Any practitioner or applicant who has been licensed or has sought  
11 to become licensed in a healing art in another state shall furnish to the  
12 State Insurance Department, for the other state or states, any information  
13 that would be required under subsection (a) of this section if the  
14 practitioner or applicant had been licensed or applied for licensure in this  
15 state.

16 (c) The State Insurance Department shall make available to the  
17 Arkansas State Medical Board the reports required under subsection (a) of  
18 this section.

19 (d)(1) The board shall review each report and determine whether any of  
20 the incidents that resulted in the claim potentially involved conduct by the  
21 practitioner or applicant that is subject to disciplinary action.

22 (2) If the board determines that disciplinary action may be  
23 required, the board shall make the report available to appropriate licensing  
24 board.

25 (e) The board shall include in the data base established by this  
26 subchapter statistical analyses of the reports it receives from the State  
27 Insurance Department.

28 (f) The board shall include in the data base established by this  
29 subchapter from reports received from the State Insurance Department for each  
30 reported claim:

31 (1) The name, address, and specialty coverage of the insured;

32 (2) The insured's policy number;

33 (3) The date of the occurrence which created the claim;

34 (4) The date the claim was reported to the insurer;

35 (5) The date of suit, if filed;

36 (6) The injured person's age and sex;

1           (7) The total number and names of all defendants involved in the  
2 claim;

3           (8) The date and amount of judgment or settlement, including the  
4 itemization of the verdict, together with a copy of the settlement or  
5 judgment;

6           (9) In the case of a settlement, such information as the  
7 department may require with regard to the injured person's incurred and  
8 anticipated medical expense, wage loss, and other expenses, without  
9 identifying the injured person;

10           (10) The loss adjustment expense paid to defense counsel, and  
11 all other allocated loss adjustment expense paid; and

12           (11) A summary of the occurrence which created the claim,  
13 without identifying the patient, including, but not limited to:

14           (A) The name of the institution, if any, and the location  
15 within the institution at which the injury occurred;

16           (B) The final diagnosis for which treatment was sought or  
17 rendered, including the patient's actual condition;

18           (C) A description of the misdiagnosis made, if any, of the  
19 patient's actual condition;

20           (D) The operation, diagnostic, or treatment procedure  
21 causing the injury;

22           (E) A description of the principal injury giving rise to  
23 the claim;

24           (F) The safety management steps that have been taken by  
25 the insured to make similar occurrences or injuries less likely in the  
26 future; and

27           (G) Any other information required by the board to analyze  
28 and evaluate the nature, causes, location, cost, and damages involved in  
29 professional liability cases.

30           (g) There shall be no liability on the part of, and no cause of action  
31 of any nature shall arise against, any insurer reporting under this section  
32 nor its agents or employees for any action taken by them under this section.

33           (h) There shall be no liability on the part of, and no cause of action  
34 shall arise against, the executive director or any other permanent or  
35 temporary personnel or professional medical investigators for any act done or  
36 proceeding undertaken or performed in good faith and in furtherance of the

1 purposes of this subchapter.

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3 17-95-705. Penalties.

4 (a) The Arkansas State Medical Board and the Arkansas State Board of  
5 Nursing may:

6 (1) Refuse to issue a license to an applicant who fails to  
7 submit the information required under this subchapter;

8 (2) Suspend the license of any practitioner who fails to update  
9 the information required under this subchapter; and

10 (3) Assess a fine not to exceed fifty dollars (\$50.00) for each  
11 day a practitioner fails to submit or update the information required under  
12 this subchapter.

13 (b) The State Insurance Department may impose a fine of two hundred  
14 fifty dollars (\$250) per day per case, but not to exceed two thousand dollars  
15 (\$2,000) per case, against an insurer that violates the requirements of this  
16 section.

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18 /s/ Ledbetter  
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