

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

# HOUSE BILL 2412

AN ACT

AMENDING SECTIONS 32-1401, 32-1403.01, 32-1405, 32-1431 AND 32-1451, ARIZONA  
REVISED STATUTES; RELATING TO THE ALLOPATHIC BOARD OF MEDICAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1401, Arizona Revised Statutes, is amended to  
3 read:

4 32-1401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Active license" means a valid and existing license to practice  
7 medicine.

8 2. "Adequate records" means legible medical records containing, at a  
9 minimum, sufficient information to identify the patient, support the  
10 diagnosis, justify the treatment, accurately document the results, indicate  
11 advice and cautionary warnings provided to the patient and provide sufficient  
12 information for another practitioner to assume continuity of the patient's  
13 care at any point in the course of treatment.

14 3. "Advisory letter" means a nondisciplinary letter to notify a  
15 licensee that while there is insufficient evidence to support disciplinary  
16 action the board believes that continuation of the activities that led to the  
17 investigation may result in further board action against the licensee.

18 4. "Approved hospital internship, residency or clinical fellowship  
19 program" means a program at a hospital that at the time the training occurred  
20 was legally incorporated and that had a program that was approved for  
21 internship, fellowship or residency training by the accreditation council for  
22 graduate medical education, the association of American medical colleges, the  
23 royal college of physicians and surgeons of Canada or any similar body in the  
24 United States or Canada approved by the board whose function is that of  
25 approving hospitals for internship, fellowship or residency training.

26 5. "Approved school of medicine" means any school or college offering  
27 a course of study ~~which, upon~~ THAT, ON successful completion, results in the  
28 degree of doctor of medicine and whose course of study has been approved or  
29 accredited by an educational or professional association, recognized by the  
30 board, including the association of American medical colleges, the  
31 association of Canadian medical colleges or the American medical association.

32 6. "Board" means the allopathic board of medical examiners of the  
33 state of Arizona.

34 7. "Completed application" means that the applicant has supplied all  
35 required fees, information and correspondence requested by the board on forms  
36 and in a manner acceptable to the board.

37 8. "Direct supervision" means that a physician, physician assistant  
38 licensed pursuant to chapter 25 of this title or nurse practitioner certified  
39 pursuant to chapter 15 of this title is within the same room or office suite  
40 as the medical assistant in order to be available for consultation regarding  
41 those tasks the medical assistant performs pursuant to section 32-1456.

42 9. "Dispense" means the delivery by a doctor of medicine of a  
43 prescription drug or device to a patient, except for samples packaged for  
44 individual use by licensed manufacturers or repackagers of drugs, and

1 includes the prescribing, administering, packaging, labeling and security  
2 necessary to prepare and safeguard the drug or device for delivery.

3 10. "Doctor of medicine" means a natural person holding a license,  
4 registration or permit to practice medicine pursuant to this chapter.

5 11. "Full-time faculty member" means a physician employed full time as  
6 a faculty member while holding the academic position of assistant professor  
7 or a higher position at an approved school of medicine.

8 12. "Health care institution" means any facility as defined in section  
9 36-401, any person authorized to transact disability insurance, as defined in  
10 title 20, chapter 6, article 4 or 5, any person who is issued a certificate  
11 of authority pursuant to title 20, chapter 4, article 9 or any other  
12 partnership, association or corporation ~~which~~ THAT provides health care to  
13 consumers.

14 13. "Immediate family" means the spouse, natural or adopted children,  
15 father, mother, brothers and sisters of the doctor and the natural or adopted  
16 children, father, mother, brothers and sisters of the doctor's spouse.

17 14. "Joint board" means the joint board on the regulation of physician  
18 assistants established pursuant to chapter 25 of this title.

19 15. "Letter of reprimand" means a disciplinary letter that is issued by  
20 the board and that informs the physician that the physician's conduct  
21 violates state or federal law and may require the board to monitor the  
22 physician.

23 16. "Medical assistant" means an unlicensed person who meets the  
24 requirements of section 32-1456, has completed an education program approved  
25 by the board, assists in a medical practice under the supervision of a doctor  
26 of medicine, physician assistant or nurse practitioner and performs delegated  
27 procedures commensurate with the assistant's education and training but does  
28 not diagnose, interpret, design or modify established treatment programs or  
29 perform any functions ~~which~~ THAT would violate any statute applicable to the  
30 practice of medicine.

31 17. "Medical peer review" means:

32 (a) The participation by a doctor of medicine in the review and  
33 evaluation of the medical management of a patient and the use of resources  
34 for patient care.

35 (b) Activities relating to a health care institution's decision to  
36 grant or continue privileges to practice at that institution.

37 18. "Medically incompetent" means a person who the board determines is  
38 incompetent based on a variety of factors including:

39 (a) A lack of sufficient medical knowledge or skills, or both, to a  
40 degree likely to endanger the health of patients.

41 (b) When considered with other indications of medical incompetence,  
42 failing to obtain a scaled score of at least seventy-five per cent on the  
43 written special purpose licensing examination administered by the board.

44 19. "Medicine" means allopathic medicine as practiced by the recipient  
45 of a degree of doctor of medicine.

1           20. "Physician" means a doctor of medicine licensed pursuant to this  
2 chapter.

3           21. "Practice of medicine" means the diagnosis, the treatment or the  
4 correction of or the attempt or the holding of oneself out as being able to  
5 diagnose, treat or correct any and all human diseases, injuries, ailments,  
6 infirmities, deformities, physical or mental, real or imaginary, by any  
7 means, methods, devices or instrumentalities, except as the same may be among  
8 the acts or persons not affected by this chapter. The practice of medicine  
9 includes the practice of medicine alone or the practice of surgery alone, or  
10 both.

11           22. "Special purpose licensing examination" means an examination  
12 developed by the national board of medical examiners on behalf of the  
13 federation of state medical boards for use by state licensing boards to test  
14 the basic medical competence of physicians who are applying for licensure and  
15 who have been in practice for a considerable period of time in another  
16 jurisdiction and to determine the competence of a physician under  
17 investigation by a state licensing board.

18           23. "Teaching hospital's accredited graduate medical education program"  
19 means that the hospital is incorporated and has an internship, fellowship or  
20 residency training program that is accredited by the accreditation council  
21 for graduate medical education, the American medical association, the  
22 association of American medical colleges, the royal college of physicians and  
23 surgeons of Canada or a similar body in the United States or Canada approved  
24 by the board whose function is that of approving hospitals for internship,  
25 fellowship or residency training.

26           24. "Teaching license" means a valid license to practice medicine as a  
27 full-time faculty member of an approved school of medicine or a teaching  
28 hospital's accredited graduate medical education program.

29           25. "Unprofessional conduct" includes the following, whether occurring  
30 in this state or elsewhere:

31           (a) Violating any federal or state laws or rules and regulations  
32 applicable to the practice of medicine.

33           (b) Intentionally disclosing a professional secret or intentionally  
34 disclosing a privileged communication except as either act may otherwise be  
35 required by law.

36           (c) False, fraudulent, deceptive or misleading advertising by a doctor  
37 of medicine or the doctor's staff, employer or representative.

38           (d) Committing a felony, whether or not involving moral turpitude, or  
39 a misdemeanor involving moral turpitude. In either case, conviction by any  
40 court of competent jurisdiction or a plea of no contest is conclusive  
41 evidence of the commission.

42           (e) Failing or refusing to maintain adequate records on a patient.

43           (f) Habitual intemperance in the use of alcohol or habitual substance  
44 abuse.

- 1 (g) Using controlled substances except if prescribed by another  
2 physician for use during a prescribed course of treatment.
- 3 (h) Prescribing or dispensing controlled substances to members of the  
4 physician's immediate family.
- 5 (i) Prescribing, dispensing or administering schedule II controlled  
6 substances as defined in section 36-2513 including amphetamines and similar  
7 schedule II sympathomimetic drugs in the treatment of exogenous obesity for a  
8 period in excess of thirty days in any one year, or the non-therapeutic use  
9 of injectable amphetamines.
- 10 (j) Prescribing, dispensing or administering any controlled substance  
11 or prescription-only drug for other than accepted therapeutic purposes.
- 12 (k) Signing a blank, undated or predated prescription form.
- 13 (l) Conduct that the board determines is gross malpractice, repeated  
14 malpractice or any malpractice resulting in the death of a patient.
- 15 (m) Representing that a manifestly incurable disease or infirmity can  
16 be permanently cured, or that any disease, ailment or infirmity can be cured  
17 by a secret method, procedure, treatment, medicine or device, if such is not  
18 the fact.
- 19 (n) Refusing to divulge to the board ~~upon~~ ON demand the means, method,  
20 procedure, modality of treatment or medicine used in the treatment of a  
21 disease, injury, ailment or infirmity.
- 22 (o) Action THAT IS taken against a doctor of medicine by another  
23 licensing or regulatory jurisdiction due to that doctor's mental or physical  
24 inability to engage safely in the practice of medicine, ~~his~~ THE DOCTOR'S  
25 medical incompetence or for unprofessional conduct as defined by that  
26 jurisdiction and ~~which~~ THAT corresponds directly or indirectly to an act of  
27 unprofessional conduct prescribed by this paragraph. The action taken may  
28 include refusing, denying, revoking or suspending a license by that  
29 jurisdiction or a surrendering of a license to that jurisdiction, otherwise  
30 limiting, restricting or monitoring a licensee by that jurisdiction or  
31 placing a licensee on probation by that jurisdiction.
- 32 (p) Sanctions imposed by an agency of the federal government,  
33 including restricting, suspending, limiting or removing a person from the  
34 practice of medicine or restricting that person's ability to obtain financial  
35 remuneration.
- 36 (q) Any conduct or practice ~~which~~ THAT is or might be harmful or  
37 dangerous to the health of the patient or the public.
- 38 (r) Violating a formal order, probation, consent agreement or  
39 stipulation issued or entered into by the board or its executive director  
40 under the provisions of this chapter.
- 41 (s) Violating or attempting to violate, directly or indirectly, or  
42 assisting in or abetting the violation of or conspiring to violate any  
43 provision of this chapter.
- 44 (t) Knowingly making any false or fraudulent statement, written or  
45 oral, in connection with the practice of medicine or if applying for

- 1 privileges or renewing an application for privileges at a health care  
2 institution.
- 3 (u) Charging a fee for services not rendered or dividing a  
4 professional fee for patient referrals among health care providers or health  
5 care institutions or between these providers and institutions or a  
6 contractual arrangement ~~which~~ THAT has the same effect.
- 7 (v) Obtaining a fee by fraud, deceit or misrepresentation.
- 8 (w) Charging or collecting a clearly excessive fee. In determining if  
9 a fee is clearly excessive, **THE BOARD SHALL CONSIDER** the fee or range of fees  
10 customarily charged in the state for similar services ~~shall be considered by~~  
11 ~~the board,~~ in light of modifying factors,— such as the time required, the  
12 complexity of the service and the skill requisite to perform the service  
13 properly. This subdivision does not apply if there is a clear written  
14 contract for a fixed fee between the physician and the patient ~~which~~ THAT has  
15 been entered into ~~prior to~~ **BEFORE** the provision of service.
- 16 (x) Fetal experiments conducted in violation of section 36-2302.
- 17 (y) The use of experimental forms of diagnosis and treatment without  
18 adequate informed patient consent, and without conforming to generally  
19 accepted experimental criteria, including protocols, detailed records,  
20 periodic analysis of results and periodic review by a medical peer review  
21 committee as approved by the federal food and drug administration or its  
22 successor agency.
- 23 ~~(z) Sexual intimacies with a patient.~~
- 24 (z) **ENGAGING IN SEXUAL CONDUCT WITH A CURRENT PATIENT OR WITH A FORMER**  
25 **PATIENT WITHIN ONE YEAR AFTER THE LAST MEDICAL CONSULTATION UNLESS THE**  
26 **PATIENT WAS THE LICENSEE'S SPOUSE AT THE TIME OF THE CONTACT OR, IMMEDIATELY**  
27 **PRECEDING THE PHYSICIAN-PATIENT RELATIONSHIP, WAS IN A DATING, COURTSHIP OR**  
28 **ENGAGEMENT RELATIONSHIP WITH THE LICENSEE. FOR THE PURPOSES OF THIS**  
29 **SUBDIVISION, "SEXUAL CONDUCT" INCLUDES:**
- 30 (i) **ENGAGING IN OR SOLICITING SEXUAL RELATIONSHIPS, WHETHER CONSENSUAL**  
31 **OR NONCONSENSUAL.**
- 32 (ii) **MAKING SEXUAL ADVANCES, REQUESTING SEXUAL FAVORS OR ENGAGING IN**  
33 **ANY OTHER VERBAL CONDUCT OR PHYSICAL CONTACT OF A SEXUAL NATURE WITH A**  
34 **PATIENT.**
- 35 (iii) **INTENTIONALLY VIEWING A COMPLETELY OR PARTIALLY DISROBED PATIENT**  
36 **IN THE COURSE OF TREATMENT IF THE VIEWING IS NOT RELATED TO PATIENT DIAGNOSIS**  
37 **OR TREATMENT UNDER CURRENT PRACTICE STANDARDS.**
- 38 (aa) Procuring or attempting to procure a license to practice medicine  
39 or a license renewal by fraud, by misrepresentation or by knowingly taking  
40 advantage of the mistake of another person or an agency.
- 41 (bb) Representing or holding oneself out as being a medical specialist  
42 when such is not the fact.
- 43 (cc) Maintaining a professional connection with or lending one's name  
44 to enhance or continue the activities of an illegal practitioner of medicine.

- 1 (dd) Failing to furnish information in a timely manner to the board or  
2 its investigators or representatives if legally requested by the board.
- 3 (ee) Failing to allow properly authorized board personnel on demand to  
4 examine and have access to documents, reports and records maintained by the  
5 physician that relate to his medical practice or medically related  
6 activities.
- 7 (ff) Knowingly failing to disclose to a patient on a form that is  
8 prescribed by the board and that is dated and signed by the patient or  
9 guardian acknowledging that the patient or guardian has read and understands  
10 that the doctor has a direct financial interest in a separate diagnostic or  
11 treatment agency or in non-routine goods or services ~~which~~ THAT the patient  
12 is being prescribed and if the prescribed treatment, goods or services are  
13 available on a competitive basis. This subdivision does not apply to a  
14 referral by one doctor of medicine to another doctor of medicine within a  
15 group of doctors of medicine practicing together.
- 16 (gg) Using chelation therapy in the treatment of arteriosclerosis or  
17 as any other form of therapy, with the exception of treatment of heavy metal  
18 poisoning, without:
- 19 (i) Adequate informed patient consent.
- 20 (ii) Conforming to generally accepted experimental criteria, including  
21 protocols, detailed records, periodic analysis of results and periodic review  
22 by a medical peer review committee.
- 23 (iii) Approval by the federal food and drug administration or its  
24 successor agency.
- 25 (hh) Prescribing, dispensing or administering anabolic-androgenic  
26 steroids to a person for other than therapeutic purposes.
- 27 (ii) Lack of or inappropriate direction, collaboration or direct  
28 supervision of a medical assistant or a licensed, certified or registered  
29 health care provider employed by, supervised by or assigned to the physician.
- 30 (jj) Knowingly making a false or misleading statement to the board or  
31 on a form required by the board or in a written correspondence, including  
32 attachments, with the board.
- 33 (kk) Failing to dispense drugs and devices in compliance with article  
34 6 of this chapter.
- 35 (ll) Conduct that the board determines is gross negligence, repeated  
36 negligence or negligence resulting in harm to or the death of a patient.
- 37 (mm) The representation by a doctor of medicine or ~~his~~ THE DOCTOR'S  
38 staff, employer or representative that the doctor is boarded or board  
39 certified if this is not true or the standing is not current or without  
40 supplying the full name of the specific agency, organization or entity  
41 granting this standing.
- 42 (nn) Refusing to submit to a body fluid examination as required by the  
43 board pursuant to section 32-1452 or pursuant to a board investigation into a  
44 doctor of medicine's alleged substance abuse.

1 (oo) Failing to report in writing to the board or the joint board any  
2 evidence that a doctor of medicine or a physician assistant is or may be  
3 medically incompetent, guilty of unprofessional conduct or mentally or  
4 physically unable to safely practice medicine or as a physician assistant.

5 (pp) The failure of a physician who is the chief executive officer,  
6 the medical director or the medical chief of staff of a health care  
7 institution to report in writing to the board that the hospital privileges of  
8 a doctor of medicine have been denied, revoked, suspended, supervised or  
9 limited because of actions by the doctor that appear to show that the doctor  
10 is or may be medically incompetent, is or may be guilty of unprofessional  
11 conduct or is or may be unable to engage safely in the practice of medicine.

12 (qq) Representing oneself to be a current member of the board, its  
13 staff or a board medical consultant if this is not true.

14 (rr) Failing to make patient medical records in the physician's  
15 possession promptly available to a physician assistant, a nurse practitioner,  
16 a person licensed pursuant to this chapter or a podiatrist, chiropractor,  
17 naturopathic physician, osteopathic physician or homeopathic physician  
18 licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper  
19 authorization to do so from the patient, a minor patient's parent, the  
20 patient's legal guardian or the patient's authorized representative or  
21 failing to comply with title 12, chapter 13, article 7.1.

22 (ss) Prescribing, dispensing or furnishing a prescription medication  
23 or a prescription-only device as defined in section 32-1901 to a person  
24 unless the licensee first conducts a physical examination of that person or  
25 has previously established a doctor-patient relationship. This subdivision  
26 does not apply to:

27 (i) A physician who provides temporary patient supervision on behalf  
28 of the patient's regular treating ~~physician~~ LICENSED HEALTH CARE  
29 PROFESSIONAL.

30 (ii) Emergency medical situations as defined in section 41-1831.

31 Sec. 2. Section 32-1403.01, Arizona Revised Statutes, is amended to  
32 read:

33 32-1403.01. Licensees; profiles; required information; review;  
34 malpractice information; civil penalty

35 A. Beginning on January 1, 2001, the allopathic board of medical  
36 examiners shall make available to the public a profile of each licensee. The  
37 board shall make this information available through an internet web site and,  
38 if requested, in writing. The profile shall contain the following  
39 information:

40 1. A description of any criminal conviction within the last five  
41 years. For purposes of this paragraph, a licensee is deemed to be convicted  
42 of a crime if the licensee pled guilty or was found guilty by a court of  
43 competent jurisdiction.

44 2. A description of any charges within the last five years to which  
45 the licensee pled no contest.

1           3. The number of pending complaints and final board disciplinary and  
2 nondisciplinary actions, including dismissals, within the last five years.  
3 Information concerning pending complaints shall contain the following  
4 statement:

5           Pending complaints represent unproven allegations. On  
6 investigation, many complaints are found to be without merit and  
7 are dismissed.

8           4. All medical malpractice court judgments and all medical malpractice  
9 ~~arbitration~~ awards **OR SETTLEMENTS** in which a payment ~~was awarded~~ **IS MADE** to a  
10 complaining party within the last five years. Information concerning  
11 malpractice actions shall also contain the following statement:

12           The settlement of a medical malpractice action may occur for a  
13 variety of reasons that do not necessarily reflect negatively on  
14 the professional competence or conduct of the doctor. A payment  
15 in settlement of a medical malpractice action does not create a  
16 presumption that medical malpractice occurred.

17           5. The name and location of the licensee's medical school and the date  
18 of graduation.

19           6. The name and location of the institution from which the licensee  
20 received graduate medical education and the date that education was  
21 completed.

22           7. The licensee's primary practice location.

23           B. Each licensee shall submit the information required pursuant to  
24 subsection A each year as directed by the board. An applicant for licensure  
25 shall submit this information at the time of application. The applicant and  
26 licensee shall submit the information on a form prescribed by the board. A  
27 licensee shall submit immediately any changes in information required  
28 pursuant to subsection A, paragraphs 1, 2 and 4. The board shall update  
29 immediately its internet web site to reflect changes in information relating  
30 to subsection A, paragraphs 1 through 4. The board shall update the internet  
31 web site information at least annually.

32           C. The board shall provide each licensee with a copy of the licensee's  
33 profile and give the licensee reasonable time to correct the profile before  
34 it is available to the public.

35           D. It is an act of unprofessional conduct for a licensee to provide  
36 erroneous information ~~required by~~ **PURSUANT TO** this section. In addition to  
37 other disciplinary action, the board may impose a civil penalty of not more  
38 than one thousand dollars for each erroneous statement.

39           Sec. 3. Section 32-1405, Arizona Revised Statutes, is amended to read:

40           **32-1405. Executive director; compensation; duties; appeal to**  
41           **the board**

42           A. The board shall appoint an executive director who shall serve at  
43 the pleasure of the board. The executive director shall not be a board  
44 member, except that the board may authorize the executive director to

- 1 represent the board and to vote on behalf of the board at meetings of the  
2 federation of state medical boards of the United States.
- 3 B. The executive director is eligible to receive compensation set by  
4 the board within the range determined under section 38-611.
- 5 C. The executive director or the executive director's designee shall:  
6 1. Employ, evaluate, dismiss, discipline and direct professional,  
7 clerical, technical, investigative and administrative personnel necessary to  
8 carry on the work of the board.
- 9 2. Set compensation for board employees within the range determined  
10 under section 38-611.
- 11 3. As directed by the board, prepare and submit recommendations for  
12 amendments to the medical practice act for consideration by the legislature.
- 13 4. Appoint and employ medical consultants and agents necessary to  
14 conduct investigations, gather information and perform those duties the  
15 executive director determines are necessary and appropriate to enforce this  
16 chapter.
- 17 5. Issue licenses, registrations and permits to applicants who meet  
18 the requirements of this chapter.
- 19 6. Manage the board's offices.
- 20 7. Prepare minutes, records, reports, registries, directories, books  
21 and newsletters and record all board transactions and orders.
- 22 8. Collect all monies due and payable to the board.
- 23 9. Pay all bills for authorized expenditures of the board and its  
24 staff.
- 25 10. Prepare an annual budget.
- 26 11. Submit a copy of the budget each year to the governor, the speaker  
27 of the house of representatives and the president of the senate.
- 28 12. Initiate an investigation if evidence appears to demonstrate that a  
29 physician may be engaged in unprofessional conduct or may be medically  
30 incompetent or mentally or physically unable to safely practice medicine.
- 31 13. Issue subpoenas if necessary to compel the attendance and testimony  
32 of witnesses and the production of books, records, documents and other  
33 evidence.
- 34 14. Provide assistance to the attorney general in preparing and sign  
35 and execute disciplinary orders, rehabilitative orders and notices of  
36 hearings as directed by the board.
- 37 15. Enter into contracts for goods and services pursuant to title 41,  
38 chapter 23 that are necessary to carry out board policies and directives.
- 39 16. Execute board directives.
- 40 17. Manage and supervise the operation of the joint board on the  
41 regulation of physician assistants.
- 42 18. Issue certificates to physician assistant applicants who meet the  
43 requirements of chapter 25 of this title.

1           19. Represent the board with the federal government, other states or  
2 jurisdictions of the United States, this state, political subdivisions of  
3 this state, the news media and the public.

4           20. On behalf of the board, enter into stipulated agreements with  
5 persons under the jurisdiction of either the board or the joint board on the  
6 regulation of physician assistants for the treatment, rehabilitation and  
7 monitoring of chemical substance abuse or misuse.

8           21. Review all complaints filed pursuant to section 32-1451. If  
9 delegated by the board, the executive director may also dismiss complaints  
10 ~~that do not involve medical incompetence~~ IF THE INFORMATION PROVIDED DOES NOT  
11 MERIT ACTION AGAINST THE LICENSEE.

12           22. If delegated by the board, directly refer cases to a formal hearing  
13 ~~if evidence warrants suspension or revocation.~~

14           23. If delegated by the board, close cases resolved through mediation.

15           24. If delegated by the board, issue advisory letters.

16           25. If delegated by the board, enter into a consent agreement if there  
17 is evidence of danger to the public health and safety.

18           26. If delegated by the board, grant uncontested requests for inactive  
19 status and cancellation of a license pursuant to sections 32-1431 and  
20 32-1433.

21           27. If delegated by the board, refer cases to the board for a formal  
22 interview.

23           28. Perform all other administrative, licensing or regulatory duties  
24 required by the board.

25           D. Medical consultants and agents appointed pursuant to subsection C,  
26 paragraph 4 of this section are eligible to receive compensation determined  
27 by the executive director in an amount not to exceed two hundred dollars for  
28 each day of service.

29           E. A person who is aggrieved by an action taken by the executive  
30 director may request the board to review that action by filing with the board  
31 a written request within thirty days after that person is notified of the  
32 executive director's action by personal delivery or certified mail to that  
33 person's last known residence or place of business. At the next regular  
34 board meeting, the board shall review the executive director's action. On  
35 review, the board shall approve, modify or reject the executive director's  
36 action.

37           Sec. 4. Section 32-1431, Arizona Revised Statutes, is amended to read:  
38 32-1431. Inactive license; application; practice prohibitions

39           A. A person holding a current active license to practice medicine in  
40 this state may request an inactive license from the board IF BOTH OF THE  
41 FOLLOWING ARE TRUE:

- 42           1. THE LICENSEE IS NOT PRESENTLY UNDER INVESTIGATION BY THE BOARD.  
43           2. THE BOARD HAS NOT COMMENCED ANY DISCIPLINARY PROCEEDING AGAINST THE  
44 LICENSEE.

1 B. The board ~~shall~~ MAY grant an inactive license and waive the renewal  
2 fees and requirements for continuing medical education specified by section  
3 32-1434 if the licensee provides evidence to the board's satisfaction that  
4 the licensee has totally retired from the practice of medicine in this state  
5 and any state, territory and district of the United States or any foreign  
6 country and has paid all of the fees required by this chapter ~~prior to~~ BEFORE  
7 the request. The board may grant pro bono registration pursuant to section  
8 32-1429, subsection C to a physician who holds an inactive license under this  
9 section.

10 C. During any period in which a medical doctor holds an inactive  
11 license, that person shall not engage in the practice of medicine or continue  
12 to hold or maintain a drug enforcement administration controlled substances  
13 registration certificate, except as permitted by a pro bono registration  
14 pursuant to section 32-1429, subsection C. Any person who engages in the  
15 practice of medicine while on inactive license status is considered to be a  
16 person who practices medicine without a license or without being exempt from  
17 licensure as provided in this chapter.

18 D. The board may convert an inactive license to an active license if  
19 the applicant pays the renewal fee and presents evidence satisfactory to the  
20 board that the applicant possesses the medical knowledge and is physically  
21 and mentally able to safely engage in the practice of medicine. The board  
22 may require any combination of physical examination, psychiatric or  
23 psychological evaluation or successful passage of the special purpose  
24 licensing examination or interview it finds necessary to assist it in  
25 determining the ability of a physician holding an inactive license to return  
26 to the active practice of medicine.

27 Sec. 5. Section 32-1451, Arizona Revised Statutes, is amended to read:  
28 32-1451. Grounds for disciplinary action; duty to report;  
29 immunity; proceedings; board action; notice  
30 requirements

31 A. The board on its own motion may investigate any evidence that  
32 appears to show that a doctor of medicine is or may be medically incompetent,  
33 is or may be guilty of unprofessional conduct or is or may be mentally or  
34 physically unable safely to engage in the practice of medicine. On written  
35 request of a complainant the board shall review a complaint that has been  
36 administratively closed by the executive director and take any action it  
37 deems appropriate. Any person may, and a doctor of medicine, the Arizona  
38 medical association, a component county society of that association and any  
39 health care institution shall, report to the board any information that  
40 appears to show that a doctor of medicine is or may be medically incompetent,  
41 is or may be guilty of unprofessional conduct or is or may be mentally or  
42 physically unable safely to engage in the practice of medicine. The board or  
43 the executive director shall notify the doctor as to the content of the  
44 complaint as soon as reasonable. Any person or entity that reports or  
45 provides information to the board in good faith is not subject to an action

1 for civil damages. If requested, the board shall not disclose the name of a  
2 person who supplies information regarding a licensee's drug or alcohol  
3 impairment. It is an act of unprofessional conduct for any doctor of  
4 medicine to fail to report as required by this section. The board shall  
5 report any health care institution that fails to report as required by this  
6 section to that institution's licensing agency.

7 B. The chief executive officer, the medical director or the medical  
8 chief of staff of a health care institution shall inform the board if the  
9 privileges of a doctor to practice in that health care institution are  
10 denied, revoked, suspended or limited because of actions by the doctor that  
11 appear to show that the doctor is or may be medically incompetent, is or may  
12 be guilty of unprofessional conduct or is or may be mentally or physically  
13 unable to safely engage in the practice of medicine, along with a general  
14 statement of the reasons, including patient chart numbers, that led the  
15 health care institution to take the action. The chief executive officer, the  
16 medical director or the medical chief of staff of a health care institution  
17 shall inform the board if a doctor under investigation resigns or if a doctor  
18 resigns in lieu of disciplinary action by the health care institution.  
19 Notification shall include a general statement of the reasons for the  
20 resignation, including patient chart numbers. The board shall inform all  
21 appropriate health care institutions in this state as defined in section  
22 36-401 and the Arizona health care cost containment system **ADMINISTRATION** of  
23 a resignation, denial, revocation, suspension or limitation, and the general  
24 reason for that action, without divulging the name of the reporting health  
25 care institution. A person who reports information in good faith pursuant to  
26 this subsection is not subject to civil liability.

27 C. The board or, if delegated by the board, the executive director  
28 shall require any combination of mental, physical or oral or written medical  
29 competency examinations and conduct necessary investigations including  
30 investigational interviews between representatives of the board and the  
31 doctor to fully inform itself with respect to any information filed with the  
32 board under subsection A of this section. These examinations may include  
33 biological fluid testing. The board or, if delegated by the board, the  
34 executive director may require the doctor, at the doctor's expense, to  
35 undergo assessment by a board approved rehabilitative, retraining or  
36 assessment program.

37 D. If the board finds, based on the information it receives under  
38 subsections A and B of this section, that the public health, safety or  
39 welfare imperatively requires emergency action, and incorporates a finding to  
40 that effect in its order, the board may **RESTRICT, LIMIT OR** order a summary  
41 suspension of a license pending proceedings for revocation or other action.  
42 If the board takes ~~this~~ action **PURSUANT TO THIS SUBSECTION** it shall also  
43 serve the licensee with a written notice that states the charges and that the  
44 licensee is entitled to a formal hearing before the board or an  
45 administrative law judge within sixty days.

1 E. If, after completing its investigation, the board finds that the  
2 information provided pursuant to subsection A of this section is not of  
3 sufficient seriousness to merit disciplinary action against the license of  
4 the doctor, the board or a board committee may take either of the following  
5 actions:

6 1. Dismiss if, in the opinion of the board, the information is without  
7 merit.

8 2. File an advisory letter. The licensee may file a written response  
9 with the board within thirty days after receiving the advisory letter.

10 F. If the board finds that it can take rehabilitative or disciplinary  
11 action without the presence of the doctor at a formal interview it may enter  
12 into a consent agreement with the doctor to limit or restrict the doctor's  
13 practice or to rehabilitate the doctor, protect the public and ensure the  
14 doctor's ability to safely engage in the practice of medicine. The board may  
15 also require the doctor to successfully complete a board approved  
16 rehabilitative, retraining or assessment program.

17 G. If after completing its investigation the board believes that the  
18 information is or may be true, it may request a formal interview with the  
19 doctor. If the doctor refuses the invitation or accepts and the results  
20 indicate that grounds may exist for revocation or suspension of the doctor's  
21 license for more than twelve months, the board shall issue a formal complaint  
22 and order that a hearing be held pursuant to title 41, chapter 6, article 10.  
23 If after completing a formal interview the board finds that the protection of  
24 the public requires emergency action, it may order a summary suspension of  
25 the license pending formal revocation proceedings or other action authorized  
26 by this section. If after completing the formal interview the board finds  
27 the information provided under subsection A of this section is not of  
28 sufficient seriousness to merit suspension for more than twelve months or  
29 revocation of the license, it may take the following actions:

30 1. Dismiss if, in the opinion of the board, the information is without  
31 merit.

32 2. File an advisory letter. The licensee may file a written response  
33 with the board within thirty days after the licensee receives the advisory  
34 letter.

35 3. File a letter of reprimand.

36 4. Issue a decree of censure. A decree of censure is an official  
37 action against the doctor's license and may include a requirement for  
38 restitution of fees to a patient resulting from violations of this chapter or  
39 rules adopted under this chapter.

40 5. Fix a period and terms of probation best adapted to protect the  
41 public health and safety and rehabilitate or educate the doctor concerned.  
42 Probation may include temporary suspension for not to exceed twelve months,  
43 restriction of the doctor's license to practice medicine, a requirement for  
44 restitution of fees to a patient or education or rehabilitation at the  
45 licensee's own expense. If a licensee fails to comply with the terms of

1 probation the board shall serve the licensee with a written notice that  
2 states that the licensee is subject to a formal hearing based on the  
3 information considered by the board at the formal interview and any other  
4 acts or conduct alleged to be in violation of this chapter or rules adopted  
5 by the board pursuant to this chapter including noncompliance with the term  
6 of probation, a consent agreement or a stipulated agreement.

7 6. Enter into an agreement with the doctor to restrict or limit the  
8 doctor's practice or medical activities in order to rehabilitate, retrain or  
9 assess the doctor, protect the public and ensure the physician's ability to  
10 safely engage in the practice of medicine.

11 H. If the board finds that the information provided in subsection A or  
12 G of this section warrants suspension or revocation of a license issued under  
13 this chapter, it shall initiate formal proceedings pursuant to title 41,  
14 chapter 6, article 10.

15 I. In a formal interview pursuant to subsection G of this section or  
16 in a hearing pursuant to subsection H of this section, the board in addition  
17 to any other action may impose a civil penalty in the amount of not less than  
18 ~~three hundred~~ ONE THOUSAND dollars nor more than ten thousand dollars for  
19 each violation of this chapter or a rule adopted under this chapter.

20 J. An advisory letter is a public document.

21 K. Any doctor of medicine who after a formal hearing is found by the  
22 board to be guilty of unprofessional conduct, to be mentally or physically  
23 unable safely to engage in the practice of medicine or to be medically  
24 incompetent is subject to censure, probation as provided in this section,  
25 suspension of license or revocation of license or any combination of these,  
26 including a stay of action, and for a period of time or permanently and under  
27 conditions as the board deems appropriate for the protection of the public  
28 health and safety and just in the circumstance. The board may charge the  
29 costs of formal hearings to the licensee who it finds to be in violation of  
30 this chapter.

31 L. If the board acts to modify any doctor of medicine's prescription  
32 writing privileges the board shall immediately notify the state board of  
33 pharmacy of the modification.

34 M. If the board, during the course of any investigation, determines  
35 that a criminal violation may have occurred involving the delivery of health  
36 care, it shall make the evidence of violations available to the appropriate  
37 criminal justice agency for its consideration.

38 N. ~~If the board's chairperson determines that a backlog of complaints~~  
39 ~~exists the chairperson may divide the board into two six member review~~  
40 ~~committees. Each of these committees shall select a chairperson. Four~~  
41 ~~members constitute a quorum for each committee~~ THE BOARD MAY DIVIDE INTO  
42 REVIEW COMMITTEES. The committees shall review complaints not dismissed by  
43 the executive director and may take the following actions:

44 1. Dismiss the complaint if a committee determines that ~~it is without~~  
45 ~~merit~~ THE INFORMATION PROVIDED DOES NOT MERIT ACTION AGAINST THE LICENSEE.

1           2. Issue an advisory letter. The licensee may file a written response  
2 with the board within thirty days after the licensee receives the advisory  
3 letter.

4           ~~3. Refer the matter for further review by the full board.~~

5           3. CONDUCT A FORMAL INTERVIEW PURSUANT TO SUBSECTION G OF THIS  
6 SECTION. THIS INCLUDES INITIATING FORMAL PROCEEDINGS PURSUANT TO SUBSECTION  
7 H OF THIS SECTION AND IMPOSING CIVIL PENALTIES PURSUANT TO SUBSECTION I OF  
8 THIS SECTION.

9           4. REFER THE MATTER FOR FURTHER REVIEW BY THE FULL BOARD.

10          0. PURSUANT TO SECTIONS 35-146 AND 35-147, THE BOARD SHALL DEPOSIT all  
11 monies collected from civil penalties paid pursuant to this chapter ~~shall be~~  
12 ~~deposited~~ in the state general fund.

13          P. Notice of a complaint and hearing is effective by a true copy of it  
14 being sent by certified mail to the doctor's last known address of record in  
15 the board's files. Notice of the complaint and hearing is complete on the  
16 date of its deposit in the mail. The board shall begin a formal hearing  
17 within one hundred twenty days of that date.

18          Q. A physician who submits an independent medical examination pursuant  
19 to an order by a court or the industrial commission is not subject to a  
20 complaint for unprofessional conduct unless a complaint is made or referred  
21 by a court or the industrial commission to the board. For purposes of this  
22 subsection, "independent medical examination" means a professional analysis  
23 of medical status based on a person's past and present physical and  
24 psychiatric history and conducted by a licensee or group of licensees on a  
25 contract basis for a court or for the industrial commission.

26          R. The board may accept the surrender of an active license from a  
27 person who admits in writing to any of the following:

- 28           1. Being unable to safely engage in the practice of medicine.
- 29           2. Having committed an act of unprofessional conduct.
- 30           3. Having violated this chapter or a board rule.