

REFERENCE TITLE: allopathic board of medical examiners

State of Arizona
House of Representatives
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2001

HB 2412

Introduced by
Representatives Huppenthal, Hatch-Miller, Johnson, Allen, Senators Gerard,
Brown: Representatives Cannell, Loredó

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 MISCONDUCT WITH A CURRENT PATIENT OR WITH A**
25 **FORMER PATIENT WITHIN ONE YEAR AFTER THE TERMINATION OF TREATMENT IF THE**
26 **CURRENT OR FORMER PATIENT IS NOT THE LICENSEE'S SPOUSE OR DOMESTIC**
27 **PARTNER. FOR THE PURPOSES OF THIS SUBDIVISION, "SEXUAL MISCONDUCT" INCLUDES:**

28 (i) **ENGAGING IN OR SOLICITING SEXUAL RELATIONSHIPS, WHETHER CONSENSUAL**
29 **OR NONCONSENSUAL.**

30 (ii) **MAKING SEXUAL ADVANCES, REQUESTING SEXUAL FAVORS OR ENGAGING IN**
31 **ANY OTHER VERBAL CONDUCT OR PHYSICAL CONTACT OF A SEXUAL NATURE WITH A**
32 **PATIENT.**

33 (iii) **INTENTIONALLY VIEWING A COMPLETELY OR PARTIALLY DISROBED PATIENT**
34 **IN THE COURSE OF TREATMENT IF THE VIEWING IS NOT RELATED TO PATIENT DIAGNOSIS**
35 **OR TREATMENT UNDER CURRENT PRACTICE STANDARDS.**

36 (aa) Procuring or attempting to procure a license to practice medicine
37 or a license renewal by fraud, by misrepresentation or by knowingly taking
38 advantage of the mistake of another person or an agency.

39 (bb) Representing or holding oneself out as being a medical specialist
40 when such is not the fact.

41 (cc) Maintaining a professional connection with or lending one's name
42 to enhance or continue the activities of an illegal practitioner of medicine.

43 (dd) Failing to furnish information in a timely manner to the board or
44 its investigators or representatives if legally requested by the board.

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

1 medically incompetent, guilty of unprofessional conduct or mentally or
2 physically unable to safely practice medicine or as a physician assistant.

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

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

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

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

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

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

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

31 32-1403.01. Licensees; profiles; required information; review;
32 malpractice information; civil penalty

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

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

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

44 3. The number of pending complaints and final board disciplinary and
45 nondisciplinary actions, including dismissals, within the last five years.

1 Information concerning pending complaints shall contain the following
2 statement:

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

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

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

15 5. The name and location of the licensee's medical school and the date
16 of graduation.

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

20 7. The licensee's primary practice location.

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

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

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

37 Sec. 3. Section 32-1405, Arizona Revised Statutes, is amended to read:
38 32-1405. Executive director; compensation; duties; appeal to
39 the board

40 A. The board shall appoint an executive director who shall serve at
41 the pleasure of the board. The executive director shall not be a board
42 member, except that the board may authorize the executive director to
43 represent the board and to vote on behalf of the board at meetings of the
44 federation of state medical boards of the United States.

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

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

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

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

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

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

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

15 26. If delegated by the board, grant uncontested requests for inactive
16 status and cancellation of a license pursuant to sections 32-1431 and
17 32-1433.

18 27. If delegated by the board, refer cases to the board for a formal
19 interview.

20 28. Perform all other administrative, licensing or regulatory duties
21 required by the board.

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

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

34 Sec. 4. Section 32-1431, Arizona Revised Statutes, is amended to read:
35 32-1431. Inactive license; application; practice prohibitions

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

- 39 1. THE LICENSEE IS NOT PRESENTLY UNDER INVESTIGATION BY THE BOARD.
40 2. THE BOARD HAS NOT COMMENCED ANY DISCIPLINARY PROCEEDING AGAINST THE
41 LICENSEE.

42 B. The board ~~shall~~ MAY grant an inactive license and waive the renewal
43 fees and requirements for continuing medical education specified by section
44 32-1434 if the licensee provides evidence to the board's satisfaction that
45 the licensee has totally retired from the practice of medicine in this state

1 and any state, territory and district of the United States or any foreign
2 country and has paid all of the fees required by this chapter ~~prior to~~ BEFORE
3 the request. The board may grant pro bono registration pursuant to section
4 32-1429, subsection C to a physician who holds an inactive license under this
5 section.

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

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

23 Sec. 5. Section 32-1451, Arizona Revised Statutes, is amended to read:
24 32-1451. Grounds for disciplinary action; duty to report;
25 immunity; proceedings; board action; notice
26 requirements

27 A. The board on its own motion may investigate any evidence that
28 appears to show that a doctor of medicine is or may be medically incompetent,
29 is or may be guilty of unprofessional conduct or is or may be mentally or
30 physically unable safely to engage in the practice of medicine. On written
31 request of a complainant the board shall review a complaint that has been
32 administratively closed by the executive director and take any action it
33 deems appropriate. Any person may, and a doctor of medicine, the Arizona
34 medical association, a component county society of that association and any
35 health care institution shall, report to the board any information that
36 appears to show that a doctor of medicine is or may be medically incompetent,
37 is or may be guilty of unprofessional conduct or is or may be mentally or
38 physically unable safely to engage in the practice of medicine. The board or
39 the executive director shall notify the doctor as to the content of the
40 complaint as soon as reasonable. Any person or entity that reports or
41 provides information to the board in good faith is not subject to an action
42 for civil damages. If requested, the board shall not disclose the name of a
43 person who supplies information regarding a licensee's drug or alcohol
44 impairment. It is an act of unprofessional conduct for any doctor of
45 medicine to fail to report as required by this section. The board shall

1 report any health care institution that fails to report as required by this
 2 section to that institution's licensing agency.

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

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

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

42 E. If, after completing its investigation, the board finds that the
 43 information provided pursuant to subsection A of this section is not of
 44 sufficient seriousness to merit disciplinary action against the license of

1 the doctor, the board or a board committee may take either of the following
2 actions:

3 1. Dismiss if, in the opinion of the board, the information is without
4 merit.

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

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

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

27 1. Dismiss if, in the opinion of the board, the information is without
28 merit.

29 2. File an advisory letter. The licensee may file a written response
30 with the board within thirty days after the licensee receives the advisory
31 letter.

32 3. File a letter of reprimand.

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

37 5. Fix a period and terms of probation best adapted to protect the
38 public health and safety and rehabilitate or educate the doctor concerned.
39 Probation may include temporary suspension for not to exceed twelve months,
40 restriction of the doctor's license to practice medicine, a requirement for
41 restitution of fees to a patient or education or rehabilitation at the
42 licensee's own expense. If a licensee fails to comply with the terms of
43 probation the board shall serve the licensee with a written notice that
44 states that the licensee is subject to a formal hearing based on the
45 information considered by the board at the formal interview and any other

1 acts or conduct alleged to be in violation of this chapter or rules adopted
2 by the board pursuant to this chapter including noncompliance with the term
3 of probation, a consent agreement or a stipulated agreement.

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

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

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

17 J. An advisory letter is a public document.

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

28 L. If the board acts to modify any doctor of medicine's prescription
29 writing privileges the board shall immediately notify the state board of
30 pharmacy of the modification.

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

35 N. If the board's chairperson determines that a backlog of complaints
36 exists the chairperson may divide the board into two six member review
37 committees. Each of these committees shall select a chairperson. Four
38 members constitute a quorum for each committee. The committees shall review
39 complaints not dismissed by the executive director and may take the following
40 actions:

41 1. Dismiss the complaint if a committee determines that it is without
42 merit.

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

- 1 ~~3. Refer the matter for further review by the full board.~~
2 3. CONDUCT A FORMAL INTERVIEW PURSUANT TO SUBSECTION G OF THIS SECTION
3 AND TAKE ANY OF THE ACTIONS THAT THE FULL BOARD MAY TAKE AFTER IT CONDUCTS A
4 FORMAL INTERVIEW.
5 4. REFER THE MATTER FOR FURTHER REVIEW BY THE FULL BOARD.
6 0. PURSUANT TO SECTIONS 35-146 AND 35-147, THE BOARD SHALL DEPOSIT all
7 monies collected from civil penalties paid pursuant to this chapter ~~shall be~~
8 ~~deposited~~ in the state general fund.
9 P. Notice of a complaint and hearing is effective by a true copy of it
10 being sent by certified mail to the doctor's last known address of record in
11 the board's files. Notice of the complaint and hearing is complete on the
12 date of its deposit in the mail. The board shall begin a formal hearing
13 within one hundred twenty days of that date.
14 Q. A physician who submits an independent medical examination pursuant
15 to an order by a court or the industrial commission is not subject to a
16 complaint for unprofessional conduct unless a complaint is made or referred
17 by a court or the industrial commission to the board. For purposes of this
18 subsection, "independent medical examination" means a professional analysis
19 of medical status based on a person's past and present physical and
20 psychiatric history and conducted by a licensee or group of licensees on a
21 contract basis for a court or for the industrial commission.
22 R. The board may accept the surrender of an active license from a
23 person who admits in writing to any of the following:
24 1. Being unable to safely engage in the practice of medicine.
25 2. Having committed an act of unprofessional conduct.
26 3. Having violated this chapter or a board rule.