

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; AMENDING LAWS 1999, FIRST SPECIAL SESSION, CHAPTER 1, SECTION 60, AS AMENDED BY LAWS 2000, CHAPTER 3, SECTION 13 AND LAWS 2000, CHAPTER 403, SECTION 1; AMENDING LAWS 1999, CHAPTER 218, SECTION 17; 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
45 includes the prescribing, administering, packaging, labeling and security
46 necessary to prepare and safeguard the drug or device for delivery.

- 1 10. "Doctor of medicine" means a natural person holding a license,
2 registration or permit to practice medicine pursuant to this chapter.
- 3 11. "Full-time faculty member" means a physician employed full time as
4 a faculty member while holding the academic position of assistant professor
5 or a higher position at an approved school of medicine.
- 6 12. "Health care institution" means any facility as defined in section
7 36-401, any person authorized to transact disability insurance, as defined in
8 title 20, chapter 6, article 4 or 5, any person who is issued a certificate
9 of authority pursuant to title 20, chapter 4, article 9 or any other
10 partnership, association or corporation ~~which~~ THAT provides health care to
11 consumers.
- 12 13. "Immediate family" means the spouse, natural or adopted children,
13 father, mother, brothers and sisters of the doctor and the natural or adopted
14 children, father, mother, brothers and sisters of the doctor's spouse.
- 15 14. "Joint board" means the joint board on the regulation of physician
16 assistants established pursuant to chapter 25 of this title.
- 17 15. "Letter of reprimand" means a disciplinary letter that is issued by
18 the board and that informs the physician that the physician's conduct
19 violates state or federal law and may require the board to monitor the
20 physician.
- 21 16. "Medical assistant" means an unlicensed person who meets the
22 requirements of section 32-1456, has completed an education program approved
23 by the board, assists in a medical practice under the supervision of a doctor
24 of medicine, physician assistant or nurse practitioner and performs delegated
25 procedures commensurate with the assistant's education and training but does
26 not diagnose, interpret, design or modify established treatment programs or
27 perform any functions ~~which~~ THAT would violate any statute applicable to the
28 practice of medicine.
- 29 17. "Medical peer review" means:
30 (a) The participation by a doctor of medicine in the review and
31 evaluation of the medical management of a patient and the use of resources
32 for patient care.
33 (b) Activities relating to a health care institution's decision to
34 grant or continue privileges to practice at that institution.
- 35 18. "Medically incompetent" means a person who the board determines is
36 incompetent based on a variety of factors including:
37 (a) A lack of sufficient medical knowledge or skills, or both, to a
38 degree likely to endanger the health of patients.
39 (b) When considered with other indications of medical incompetence,
40 failing to obtain a scaled score of at least seventy-five per cent on the
41 written special purpose licensing examination administered by the board.
- 42 19. "Medicine" means allopathic medicine as practiced by the recipient
43 of a degree of doctor of medicine.
- 44 20. "Physician" means a doctor of medicine licensed pursuant to this
45 chapter.

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

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

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

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

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

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

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

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

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

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

41 (f) Habitual intemperance in the use of alcohol or habitual substance
42 abuse.

43 (g) Using controlled substances except if prescribed by another
44 physician for use during a prescribed course of treatment.

45 (h) Prescribing or dispensing controlled substances to members of the
46 physician's immediate family.

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

1 care institutions or between these providers and institutions or a
2 contractual arrangement ~~which~~ THAT has the same effect.

3 (v) Obtaining a fee by fraud, deceit or misrepresentation.

4 (w) Charging or collecting a clearly excessive fee. In determining if
5 a fee is clearly excessive, ~~THE BOARD SHALL CONSIDER~~ the fee or range of fees
6 customarily charged in the state for similar services ~~shall be considered by~~
7 ~~the board,~~ in light of modifying factors,— such as the time required, the
8 complexity of the service and the skill requisite to perform the service
9 properly. This subdivision does not apply if there is a clear written
10 contract for a fixed fee between the physician and the patient ~~which~~ THAT has
11 been entered into ~~prior to~~ BEFORE the provision of service.

12 (x) Fetal experiments conducted in violation of section 36-2302.

13 (y) The use of experimental forms of diagnosis and treatment without
14 adequate informed patient consent, and without conforming to generally
15 accepted experimental criteria, including protocols, detailed records,
16 periodic analysis of results and periodic review by a medical peer review
17 committee as approved by the federal food and drug administration or its
18 successor agency.

19 ~~(z) Sexual intimacies with a patient.~~

20 (z) ~~ENGAGING IN SEXUAL CONDUCT WITH A CURRENT PATIENT OR WITH A FORMER~~
21 ~~PATIENT WITHIN SIX MONTHS AFTER THE LAST MEDICAL CONSULTATION UNLESS THE~~
22 ~~PATIENT WAS THE LICENSEE'S SPOUSE AT THE TIME OF THE CONTACT OR, IMMEDIATELY~~
23 ~~PRECEDING THE PHYSICIAN-PATIENT RELATIONSHIP, WAS IN A DATING OR ENGAGEMENT~~
24 ~~RELATIONSHIP WITH THE LICENSEE. FOR THE PURPOSES OF THIS SUBDIVISION,~~
25 ~~"SEXUAL CONDUCT" INCLUDES:~~

26 (i) ~~ENGAGING IN OR SOLICITING SEXUAL RELATIONSHIPS, WHETHER CONSENSUAL~~
27 ~~OR NONCONSENSUAL.~~

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

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

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

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

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

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

43 (ee) Failing to allow properly authorized board personnel on demand to
44 examine and have access to documents, reports and records maintained by the
45 physician that relate to his medical practice or medically related
46 activities.

1 (ff) Knowingly failing to disclose to a patient on a form that is
2 prescribed by the board and that is dated and signed by the patient or
3 guardian acknowledging that the patient or guardian has read and understands
4 that the doctor has a direct financial interest in a separate diagnostic or
5 treatment agency or in non-routine goods or services ~~which~~ THAT the patient
6 is being prescribed and if the prescribed treatment, goods or services are
7 available on a competitive basis. This subdivision does not apply to a
8 referral by one doctor of medicine to another doctor of medicine within a
9 group of doctors of medicine practicing together.

10 (gg) Using chelation therapy in the treatment of arteriosclerosis or
11 as any other form of therapy, with the exception of treatment of heavy metal
12 poisoning, without:

13 (i) Adequate informed patient consent.

14 (ii) Conforming to generally accepted experimental criteria, including
15 protocols, detailed records, periodic analysis of results and periodic review
16 by a medical peer review committee.

17 (iii) Approval by the federal food and drug administration or its
18 successor agency.

19 (hh) Prescribing, dispensing or administering anabolic-androgenic
20 steroids to a person for other than therapeutic purposes.

21 (ii) Lack of or inappropriate direction, collaboration or direct
22 supervision of a medical assistant or a licensed, certified or registered
23 health care provider employed by, supervised by or assigned to the physician.

24 (jj) Knowingly making a false or misleading statement to the board or
25 on a form required by the board or in a written correspondence, including
26 attachments, with the board.

27 (kk) Failing to dispense drugs and devices in compliance with article
28 6 of this chapter.

29 (ll) Conduct that the board determines is gross negligence, repeated
30 negligence or negligence resulting in harm to or the death of a patient.

31 (mm) The representation by a doctor of medicine or ~~his~~ THE DOCTOR'S
32 staff, employer or representative that the doctor is boarded or board
33 certified if this is not true or the standing is not current or without
34 supplying the full name of the specific agency, organization or entity
35 granting this standing.

36 (nn) Refusing to submit to a body fluid examination as required by the
37 board pursuant to section 32-1452 or pursuant to a board investigation into a
38 doctor of medicine's alleged substance abuse.

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

43 (pp) The failure of a physician who is the chief executive officer,
44 the medical director or the medical chief of staff of a health care
45 institution to report in writing to the board that the hospital privileges of
46 a doctor of medicine have been denied, revoked, suspended, supervised or

1 limited because of actions by the doctor that appear to show that the doctor
2 is or may be medically incompetent, is or may be guilty of unprofessional
3 conduct or is or may be unable to engage safely in the practice of medicine.

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

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

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

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

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

23 (iii) PRESCRIPTIONS WRITTEN TO PREPARE A PATIENT FOR A MEDICAL
24 EXAMINATION.

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

27 32-1403.01. Licensees; profiles; required information; review;
28 malpractice information; civil penalty

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

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

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

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

44 Pending complaints represent unproven allegations. On
45 investigation, many complaints are found to be without merit and
46 are dismissed.

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

5 The settlement of a medical malpractice action may occur for a
6 variety of reasons that do not necessarily reflect negatively on
7 the professional competence or conduct of the doctor. A payment
8 in settlement of a medical malpractice action does not create a
9 presumption that medical malpractice occurred.

10 5. The name and location of the licensee's medical school and the date
11 of graduation.

12 6. The name and location of the institution from which the licensee
13 received graduate medical education and the date that education was
14 completed.

15 7. The licensee's primary practice location.

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

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

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

32 Sec. 3. Section 32-1405, Arizona Revised Statutes, is amended to read:
33 **32-1405. Executive director; compensation; duties; appeal to**
34 **the board**

35 A. The board shall appoint an executive director who shall serve at
36 the pleasure of the board. The executive director shall not be a board
37 member, except that the board may authorize the executive director to
38 represent the board and to vote on behalf of the board at meetings of the
39 federation of state medical boards of the United States.

40 B. The executive director is eligible to receive compensation set by
41 the board within the range determined under section 38-611.

42 C. The executive director or the executive director's designee shall:

43 1. Employ, evaluate, dismiss, discipline and direct professional,
44 clerical, technical, investigative and administrative personnel necessary to
45 carry on the work of the board.

- 1 2. Set compensation for board employees within the range determined
2 under section 38-611.
- 3 3. As directed by the board, prepare and submit recommendations for
4 amendments to the medical practice act for consideration by the legislature.
- 5 4. Appoint and employ medical consultants and agents necessary to
6 conduct investigations, gather information and perform those duties the
7 executive director determines are necessary and appropriate to enforce this
8 chapter.
- 9 5. Issue licenses, registrations and permits to applicants who meet
10 the requirements of this chapter.
- 11 6. Manage the board's offices.
- 12 7. Prepare minutes, records, reports, registries, directories, books
13 and newsletters and record all board transactions and orders.
- 14 8. Collect all monies due and payable to the board.
- 15 9. Pay all bills for authorized expenditures of the board and its
16 staff.
- 17 10. Prepare an annual budget.
- 18 11. Submit a copy of the budget each year to the governor, the speaker
19 of the house of representatives and the president of the senate.
- 20 12. Initiate an investigation if evidence appears to demonstrate that a
21 physician may be engaged in unprofessional conduct or may be medically
22 incompetent or mentally or physically unable to safely practice medicine.
- 23 13. Issue subpoenas if necessary to compel the attendance and testimony
24 of witnesses and the production of books, records, documents and other
25 evidence.
- 26 14. Provide assistance to the attorney general in preparing and sign
27 and execute disciplinary orders, rehabilitative orders and notices of
28 hearings as directed by the board.
- 29 15. Enter into contracts for goods and services pursuant to title 41,
30 chapter 23 that are necessary to carry out board policies and directives.
- 31 16. Execute board directives.
- 32 17. Manage and supervise the operation of the joint board on the
33 regulation of physician assistants.
- 34 18. Issue certificates to physician assistant applicants who meet the
35 requirements of chapter 25 of this title.
- 36 19. Represent the board with the federal government, other states or
37 jurisdictions of the United States, this state, political subdivisions of
38 this state, the news media and the public.
- 39 20. On behalf of the board, enter into stipulated agreements with
40 persons under the jurisdiction of either the board or the joint board on the
41 regulation of physician assistants for the treatment, rehabilitation and
42 monitoring of chemical substance abuse or misuse.
- 43 21. Review all complaints filed pursuant to section 32-1451. If
44 delegated by the board, the executive director may also dismiss complaints
45 ~~that do not involve medical incompetence~~ IF THE COMPLAINT IS WITHOUT MERIT.

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

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

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

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

7 26. If delegated by the board, grant uncontested requests for inactive
8 status and cancellation of a license pursuant to sections 32-1431 and
9 32-1433.

10 27. If delegated by the board, refer cases to the board for a formal
11 interview.

12 28. Perform all other administrative, licensing or regulatory duties
13 required by the board.

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

18 E. A person who is aggrieved by an action taken by the executive
19 director may request the board to review that action by filing with the board
20 a written request within thirty days after that person is notified of the
21 executive director's action by personal delivery or certified mail to that
22 person's last known residence or place of business. At the next regular
23 board meeting, the board shall review the executive director's action. On
24 review, the board shall approve, modify or reject the executive director's
25 action.

26 Sec. 4. Section 32-1431, Arizona Revised Statutes, is amended to read:
27 32-1431. Inactive license; application; practice prohibitions

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

31 1. **THE LICENSEE IS NOT PRESENTLY UNDER INVESTIGATION BY THE BOARD.**

32 2. **THE BOARD HAS NOT COMMENCED ANY DISCIPLINARY PROCEEDING AGAINST THE**
33 **LICENSEE.**

34 B. The board ~~shall~~ **MAY** grant an inactive license and waive the renewal
35 fees and requirements for continuing medical education specified by section
36 32-1434 if the licensee provides evidence to the board's satisfaction that
37 the licensee has totally retired from the practice of medicine in this state
38 and any state, territory and district of the United States or any foreign
39 country and has paid all of the fees required by this chapter ~~prior to~~ **BEFORE**
40 the request. The board may grant pro bono registration pursuant to section
41 32-1429, subsection C to a physician who holds an inactive license under this
42 section.

43 C. During any period in which a medical doctor holds an inactive
44 license, that person shall not engage in the practice of medicine or continue
45 to hold or maintain a drug enforcement administration controlled substances
46 registration certificate, except as permitted by a pro bono registration

1 pursuant to section 32-1429, subsection C. Any person who engages in the
2 practice of medicine while on inactive license status is considered to be a
3 person who practices medicine without a license or without being exempt from
4 licensure as provided in this chapter.

5 D. The board may convert an inactive license to an active license if
6 the applicant pays the renewal fee and presents evidence satisfactory to the
7 board that the applicant possesses the medical knowledge and is physically
8 and mentally able to safely engage in the practice of medicine. The board
9 may require any combination of physical examination, psychiatric or
10 psychological evaluation or successful passage of the special purpose
11 licensing examination or interview it finds necessary to assist it in
12 determining the ability of a physician holding an inactive license to return
13 to the active practice of medicine.

14 Sec. 5. Section 32-1451, Arizona Revised Statutes, is amended to read:

15 32-1451. Grounds for disciplinary action; duty to report;
16 immunity; proceedings; board action; notice
17 requirements

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

39 B. The chief executive officer, the medical director or the medical
40 chief of staff of a health care institution shall inform the board if the
41 privileges of a doctor to practice in that health care institution are
42 denied, revoked, suspended or limited because of actions by the doctor that
43 appear to show that the doctor is or may be medically incompetent, is or may
44 be guilty of unprofessional conduct or is or may be mentally or physically
45 unable to safely engage in the practice of medicine, along with a general
46 statement of the reasons, including patient chart numbers, that led the

1 health care institution to take the action. The chief executive officer, the
2 medical director or the medical chief of staff of a health care institution
3 shall inform the board if a doctor under investigation resigns or if a doctor
4 resigns in lieu of disciplinary action by the health care institution.
5 Notification shall include a general statement of the reasons for the
6 resignation, including patient chart numbers. The board shall inform all
7 appropriate health care institutions in this state as defined in section
8 36-401 and the Arizona health care cost containment system ADMINISTRATION of
9 a resignation, denial, revocation, suspension or limitation, and the general
10 reason for that action, without divulging the name of the reporting health
11 care institution. A person who reports information in good faith pursuant to
12 this subsection is not subject to civil liability.

13 C. The board or, if delegated by the board, the executive director
14 shall require any combination of mental, physical or oral or written medical
15 competency examinations and conduct necessary investigations including
16 investigational interviews between representatives of the board and the
17 doctor to fully inform itself with respect to any information filed with the
18 board under subsection A of this section. These examinations may include
19 biological fluid testing. The board or, if delegated by the board, the
20 executive director may require the doctor, at the doctor's expense, to
21 undergo assessment by a board approved rehabilitative, retraining or
22 assessment program.

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

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

- 37 1. Dismiss if, in the opinion of the board, the information is without
38 merit.
39 2. File an advisory letter. The licensee may file a written response
40 with the board within thirty days after receiving the advisory letter.

41 F. If the board finds that it can take rehabilitative or disciplinary
42 action without the presence of the doctor at a formal interview it may enter
43 into a consent agreement with the doctor to limit or restrict the doctor's
44 practice or to rehabilitate the doctor, protect the public and ensure the
45 doctor's ability to safely engage in the practice of medicine. The board may

1 also require the doctor to successfully complete a board approved
2 rehabilitative, retraining or assessment program.

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

16 1. Dismiss if, in the opinion of the board, the ~~information~~ COMPLAINT
17 is without merit.

18 2. File an advisory letter. The licensee may file a written response
19 with the board within thirty days after the licensee receives the advisory
20 letter.

21 3. File a letter of reprimand.

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

26 5. Fix a period and terms of probation best adapted to protect the
27 public health and safety and rehabilitate or educate the doctor concerned.
28 Probation may include temporary suspension for not to exceed twelve months,
29 restriction of the doctor's license to practice medicine, a requirement for
30 restitution of fees to a patient or education or rehabilitation at the
31 licensee's own expense. If a licensee fails to comply with the terms of
32 probation the board shall serve the licensee with a written notice that
33 states that the licensee is subject to a formal hearing based on the
34 information considered by the board at the formal interview and any other
35 acts or conduct alleged to be in violation of this chapter or rules adopted
36 by the board pursuant to this chapter including noncompliance with the term
37 of probation, a consent agreement or a stipulated agreement.

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

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

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

6 J. An advisory letter is a public document.

7 K. Any doctor of medicine who after a formal hearing is found by the
8 board to be guilty of unprofessional conduct, to be mentally or physically
9 unable safely to engage in the practice of medicine or to be medically
10 incompetent is subject to censure, probation as provided in this section,
11 suspension of license or revocation of license or any combination of these,
12 including a stay of action, and for a period of time or permanently and under
13 conditions as the board deems appropriate for the protection of the public
14 health and safety and just in the circumstance. The board may charge the
15 costs of formal hearings to the licensee who it finds to be in violation of
16 this chapter.

17 L. If the board acts to modify any doctor of medicine's prescription
18 writing privileges the board shall immediately notify the state board of
19 pharmacy of the modification.

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

24 N. ~~If the board's chairperson determines that a backlog of complaints~~
25 ~~exists the chairperson may divide the board into two six member review~~
26 ~~committees. Each of these committees shall select a chairperson. Four~~
27 ~~members constitute a quorum for each committee~~ THE BOARD MAY DIVIDE INTO
28 REVIEW COMMITTEES OF NOT LESS THAN THREE MEMBERS INCLUDING A PUBLIC
29 MEMBER. The committees shall review complaints not dismissed by the
30 executive director and may take the following actions:

31 1. Dismiss the complaint if a committee determines that ~~it is without~~
32 ~~merit~~ THE COMPLAINT IS WITHOUT MERIT.

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

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

37 3. CONDUCT A FORMAL INTERVIEW PURSUANT TO SUBSECTION G OF THIS
38 SECTION. THIS INCLUDES INITIATING FORMAL PROCEEDINGS PURSUANT TO SUBSECTION
39 H OF THIS SECTION AND IMPOSING CIVIL PENALTIES PURSUANT TO SUBSECTION I OF
40 THIS SECTION.

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

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

45 P. Notice of a complaint and hearing is effective by a true copy of it
46 being sent by certified mail to the doctor's last known address of record in

1 the board's files. Notice of the complaint and hearing is complete on the
 2 date of its deposit in the mail. The board shall begin a formal hearing
 3 within one hundred twenty days of that date.

4 Q. A physician who submits an independent medical examination pursuant
 5 to an order by a court or the industrial commission is not subject to a
 6 complaint for unprofessional conduct unless a complaint is made or referred
 7 by a court or the industrial commission to the board. For purposes of this
 8 subsection, "independent medical examination" means a professional analysis
 9 of medical status based on a person's past and present physical and
 10 psychiatric history and conducted by a licensee or group of licensees on a
 11 contract basis for a court or for the industrial commission.

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

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

17 Sec. 6. Laws 1999, first special session, chapter 1, section 60, as
 18 amended by Laws 2000, chapter 3, section 13 and Laws 2000, chapter 403,
 19 section 1, is amended to read:

20 Sec. 60. MEDICAL EXAMINERS BOARD

	<u>1999-00</u>	<u>2000-01</u>
21 FTE positions	46.5	52.5
22 Operating lump sum		
23 appropriation	\$ 3,233,400	\$ 4,268,900
24 Agency reconfiguration	576,100	- 0 -
25 Attorney general - legal fees	316,300	391,700
26 Examinations	<u>16,500</u>	<u>16,500</u>
27 Total appropriation - medical examiners		
28 board	\$ 4,142,300**	\$ 4,677,100
29 Fund sources:		
30 State medical examiners board		
31 fund	\$ 4,142,300	\$ 4,677,100

32 The \$316,300 appropriated for attorney general - legal fees in fiscal
 33 year 1999-2000 is specifically designated to pay the expenses of three
 34 assistant attorney general positions, two administrative assistant positions
 35 and the 0.5 legal secretary position assigned to the board of medical
 36 examiners. The \$391,700 appropriated for attorney general - legal fees in
 37 fiscal year 2000-2001 is specifically designated to pay the expenses of 4
 38 assistant attorney general positions, 2 administrative assistant positions
 39 and the 0.5 legal secretary position assigned to the board of medical
 40 examiners. Any monies not expended for the purpose specified revert to the
 41 board of medical examiners fund.
 42

43 The board of medical examiners may use the \$576,100 in the
 44 reconfiguration special line item to reconfigure the current office space or
 45 relocate to new office space. Before engaging in office reconfiguration or

1 relocation, the board shall report to the joint legislative budget committee
2 on the proposed plan.

3 OF THE \$4,268,900 OPERATING LUMP SUM APPROPRIATION IN FISCAL YEAR
4 2000-2001, \$225,000 IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190, ARIZONA
5 REVISED STATUTES, RELATING TO LAPSING OF APPROPRIATIONS UNTIL JUNE 30, 2002.

6 Sec. 7. Retroactivity

7 Section 6 of this act applies retroactively to June 30, 2001.

8 Sec. 8. Laws 1999, chapter 218, section 17, is amended to read:

9 Sec. 17. Allopathic board of medical examiners; auditor general
10 reports

11 A. On or before October 1, 1999, the auditor general shall submit a
12 written report to the governor, the speaker of the house of representatives
13 and the president of the senate on the progress the allopathic board of
14 medical examiners has made in implementing the recommendations made by the
15 auditor general in its 1998 performance audit of that board.

16 ~~B. The auditor general shall conduct an interim performance audit of~~
17 ~~the allopathic board of medical examiners during the second half of calendar~~
18 ~~year 2001 and shall submit a written report of its findings to the governor~~
19 ~~and the appropriate committee of reference on or before November 15, 2001.~~

20 B. ON OR BEFORE NOVEMBER 15, 2001, THE AUDITOR GENERAL SHALL SUBMIT A
21 SECOND WRITTEN REPORT TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF
22 REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND THE APPROPRIATE COMMITTEE OF
23 REFERENCE ON THE PROGRESS THE ALLOPATHIC BOARD OF MEDICAL EXAMINERS HAS MADE
24 IN IMPLEMENTING THE RECOMMENDATIONS MADE BY THE AUDITOR GENERAL IN ITS 1998
25 PERFORMANCE AUDIT OF THAT BOARD.