

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

PREAMBLE

- 1. Sections Affected**

R4-16-501	New Section
R4-16-502	New Section
R4-16-503	New Section
R4-16-504	New Section
R4-16-505	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

Implementing statutes: A.R.S. §§ 32-1403(A)(2), (3), and (5), and 32-1451. This rule package is exempt from the rulemaking provisions of Arizona Revised Statutes Title 41, Chapter 6, pursuant to Laws 2002, Ch. 37, § 6.
- 3. The effective date of the rules:**

August 12, 2003
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Proposed Exempt Rulemaking: 9 A.A.R. 1407, May 9, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Legislative Liaison
Address:	Arizona Medical Board 9545 E. Doubletree Ranch Road Scottsdale, Arizona 85258
Telephone:	(480) 551-2712
Fax:	(480) 551-2828
E-mail:	comments@azmdboard.org
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

The Arizona Medical Board ("Board") is adopting rules to establish written guidelines to impose sanctions on its licensees. The intent of these rules is to provide the public and allopathic physicians with insight into how the Board determines whether there will be discipline and what the discipline will be. These rules are exempt from Arizona Revised Statutes Title 41, Chapter 6, pursuant to Laws 2002, Ch. 37, § 6.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

These rules do not diminish any previous grants of authority of a political subdivision of this state.

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9. The summary of the economic, small business, and consumer impact:

Because these rules are exempt from Arizona Revised Statutes Title 41, Chapter 6, pursuant to Laws 2002, Ch. 37, § 6, they are also exempt from the requirement to prepare an economic, small business, and consumer impact statement. However, the Board believes that any impact on the economy, small businesses, or consumers will be positive because these rules provide information to the public and allopathic physicians on disciplinary and nondisciplinary actions taken by the Board when an act of unprofessional conduct has been found by the Board.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor grammatical and capitalization corrections have been made. Additionally, when Laws 2003, Ch. 59, § 1 becomes effective, subparagraph (24) of A.R.S. § 32-1401 will become subparagraph (26). Therefore, all statutory references in these final rules to A.R.S. § 32-1401(26) actually refer to A.R.S. § 32-1401(24) until the legislative changes of the Forty-sixth Legislature, First Regular Session are codified by the Secretary of State.

11. A summary of the comments made regarding the rule and the agency response to them:

One person attended the public hearing held on June 9, 2003. The agency received no other oral or written comments on the rule while the record was open. The record closed after the public hearing on June 9, 2003 at approximately 5:45 p.m. In summary, the comments made were that the absence of prior offenses or a remoteness in time to prior offenses should not be mitigating factors as provided under R4-16-505 since there may have been other offenses that were not reported to the Board. Additionally, the Board should have the ability to utilize all sanctions available, even for a one-time occurrence.

The rules are written to inform the public and allopathic physicians of the potential sanctions for statutory violations. The rules are not mandates on the Board. The Board has total discretion in determining the appropriate sanction, if any, applicable to any given set of circumstances. Thus, the Board does have the ability to consider all sanctions, even for one-time occurrences, since the rules provide the Board discretion and flexibility. Lastly, the Board can only act on the offenses reported to it and will not presume that other offenses had occurred, but were not reported.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

This rules package is exempt from the rulemaking provisions of Arizona Revised Statutes Title 41, Chapter 6, pursuant to Laws 2002, Ch. 37, § 6.

13. Incorporations by reference and their location in the rules:

Reference is made to the Arizona Medical Board's Substantive Policy Statement No. 9, Explanation of Board Actions and Overview of Complaint Categories, within R4-16-501. This document is available and open to public inspection Monday through Friday from 8:00 a.m. to 5:00 p.m. at the offices of the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ. This document is also available through the Board's web site at www.azmdboard.org.

14. Was this rule previously made as an emergency rule?

These rules were not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 5. DISCIPLINARY ACTIONS

Section

<u>R4-16-501.</u>	<u>Intent</u>
<u>R4-16-502.</u>	<u>Application</u>
<u>R4-16-503.</u>	<u>Acts of Unprofessional Conduct</u>
<u>R4-16-504.</u>	<u>Aggravating Factors Considered in Disciplinary Actions</u>
<u>R4-16-505.</u>	<u>Mitigating Factors Considered in Disciplinary Actions</u>

ARTICLE 5. DISCIPLINARY ACTIONS

R4-16-501. Intent

The intent of these disciplinary rules is to provide the public and licensees with insight into how the Arizona Medical Board ("Board") determines whether there will be discipline and what the discipline will be. The Board has adopted Substantive Policy Statement No. 9, Explanation of Board Actions and Overview of Complaint Categories, which explains Board actions and provides an overview of complaint categories.

R4-16-502. Application

When the Board finds that a physician committed an act of unprofessional conduct the Board will then decide if the conduct rises to the level of discipline or merits a non-disciplinary action. Once the Board makes this determination, it will apply the

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rules contained in this Article and consider the aggravating and mitigating factors and the nature of the complaint. Because of factual circumstances, greater or lesser discipline than that listed in rule may be imposed in a particular case. Cases involving the same issue or conduct may not result in the same discipline because of aggravating and mitigating factors and factual differences in the cases.

R4-16-503. Acts of Unprofessional Conduct

A physician commits an act of unprofessional conduct when the physician violates one or more subparagraphs of A.R.S. § 32-1401(26). These statutory violations are referenced under the categories that follow.

1. “Violations Of Law” include those actions or omissions that violate A.R.S. § 32-1401(26)(a), (d), or (s).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
2. “False Representations” include those actions or omissions that violate A.R.S. § 32-1401(26)(m), (t), (v), (aa), (bb), (jj), (mm), or (qq).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
3. “Fee Issues” include those actions or omissions that violate A.R.S. § 32-1401(26)(u), (v), or (w).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
4. “Sexual Conduct With Patient” includes those actions or omissions that violate A.R.S. § 32-1401(26)(z).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
5. “Failure To Comply With A Board Investigation” includes those actions or omissions that violate A.R.S. § 32-1401(26)(n), (dd), or (ee).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
6. “Failing To Disclose A Financial Connection” includes those actions or omissions that violate A.R.S. § 32-1401(26)(ff).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
7. “Failing To Report Unprofessional Conduct” includes those actions or omissions that violate A.R.S. § 32-1401(26)(oo) or (pp).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
8. “Prescribing Violations” include those actions or omissions that violate A.R.S. § 32-1401(26)(h), (i), (j), (k), (hh), (kk), or (ss).
 - a. A one-time offense may result in a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include Probation.
 - b. Repetitive or egregious offenses may result in Decree of Censure, possibly with Probation, or Suspension, Revocation, or a request for Voluntary Surrender of License.
9. “False Advertising” includes those actions or omissions that violate A.R.S. § 32-1401(26)(c).
 - a. A one-time occurrence of a minor nature may be issued an advisory letter.
 - b. Repetitive, egregious, or non-remediable offenses may result in a minimum penalty of a Letter of Reprimand.
10. “Medical Records Issues” includes those actions or omissions that violate A.R.S. § 32-1401(26)(e) or (rr).
 - a. A one-time occurrence of a minor nature that does not depart from the standard of care may be issued an Advisory Letter.
 - b. Repetitive, egregious, or non-remediable offenses may result in a minimum penalty of Letter of Reprimand.

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11. “Violations Of Board Orders” includes those actions or omissions that violate A.R.S. § 32-1401(26)(r) or (nn).
 - a. A one-time offense may result in a minimum penalty of a Letter of Reprimand.
 - b. Repetitive or egregious offenses may result in a Decree of Censure with Probation, or Suspension, Summary Suspension, and/or Revocation.
12. “Actions Taken By Other Entities Against A Physician’s License” includes those actions listed in A.R.S. § 32-1401(26)(o) or (p).
 - a. A one-time occurrence of a minor nature that does not depart from the standard of care may be issued an Advisory Letter.
 - b. Repetitive or egregious offenses may result in a minimum penalty of a Letter of Reprimand.
13. “Intentionally Disclosing Privileged Information” includes those actions or omissions that violate A.R.S. § 32-1401(26)(b).
 - a. A one-time occurrence of a minor nature that does not depart from the standard of care may be issued an Advisory Letter.
 - b. Repetitive or egregious offenses may result in a minimum penalty of a Letter of Reprimand.
14. “Connection With, Or Enhancing Activities Of, Illegal Practitioner Or Medicine” includes those actions or omissions that violate A.R.S. § 32-1401(26)(cc).
 - a. A one-time offense may result in either a Letter of Reprimand or Decree of Censure, the latter penalty for serious violations. Either may include probation.
 - b. Repetitive, egregious, or non-remediable offenses may result in Suspension, Revocation, or a Request for Voluntary Surrender of License.
15. “Use Of Chelation Therapy Outside Scope Of Statute” includes those actions or omissions that violate A.R.S. § 32-1401(26)(gg).
 - a. A one-time occurrence of a minor nature that does not depart from the standard of care may be issued an Advisory Letter.
 - b. Repetitive or egregious offenses may result in a minimum penalty of a Letter of Reprimand.
16. “Use Of Experimental Forms Of Diagnosis And Treatment Outside Scope Of Statute And Fetal Experiments In Violation Of A.R.S. § 36-2302” includes those actions or omissions that violate A.R.S. § 32-1401(26)(y) or (x).
 - a. A one-time occurrence may result in Probation with a provision for remedial training or an Advisory Letter if the Physician appears to be otherwise competent and there are no aggravating factors.
 - b. Repetitive or egregious offenses may result in a Letter of Reprimand or a Decree of Censure with Probation. Offenses that are not, or are unlikely to be remediated, may result in Suspension or Revocation.
17. “Improper Direction Of Licensed, Certified Or Registered Healthcare Providers” includes those actions or omissions that violate A.R.S. § 32-1401(26)(ii).
 - a. A one-time occurrence may result in Probation with a provision for remedial training or an Advisory Letter if the Physician appears to be otherwise competent and there are no aggravating factors.
 - b. Repetitive or egregious offenses may result in a Letter of Reprimand or a Decree of Censure with Probation. Offenses that are not, or are unlikely to be remediated, may result in Suspension or Revocation.
18. “Departures From The Standard Of Care” includes those actions or omissions that violate A.R.S. § 32-1401(26)(l), (q), or (ll).
 - a. Technical Errors:
 - i. When there has been a technical error, the Board may consider the following factors:
 - (1) Whether the procedure was otherwise performed within the standard of care;
 - (2) Whether the complication that occurred is a complication that is documented to occur when the procedure is otherwise competently performed;
 - (3) Whether the complication was recognized in a timely fashion and then treated appropriately;
 - (4) Whether the patient and/or the patient’s family was informed of the complication/error in a timely fashion; and
 - (5) Whether the proper informed consent was obtained from the patient prior to the procedure or surgery.
 - ii. A one-time technical error that answers the above questions in the affirmative may be adjudicated with an Advisory Letter to trend the specific error.
 - iii. A one-time technical error that does not answer the above questions in the affirmative may result in a Letter of Reprimand or a Decree of Censure.
 - iv. Repetitive or egregious technical errors may result in a Letter of Reprimand, Decree of Censure, Probation, Suspension or Revocation or any combination, depending on severity, frequency, the potential for remediation and other aggravating circumstances. The Board may also consider instituting emergency proceedings to restrict an area of a physician’s practice that is in question.
 - b. System Errors:
 - i. A one-time occurrence that is isolated and is not egregious may not typically rise to the level of discipline and may warrant an Advisory Letter to trend the complaint.

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- ii. Repetitive or egregious offenses may result in Probation with remediation measures and may also result in a Letter of Reprimand or a Decree of Censure.
 - c. Departures Caused By Cognitive Issues Involving The Physician:
 - i. A one-time occurrence may warrant an Advisory Letter to trend the complaint if the physician appears to be otherwise careful and competent and there are no aggravating factors or may result in Probation with a provision for remedial training.
 - ii. Repetitive or egregious offenses may result in a Letter of Reprimand or a Decree of Censure with Probation. Offenses that are not, or are unlikely to be remediated, may result in Suspension or Revocation.
 - d. Departures Caused By Physical Or Mental Health Issues And The Physician Will Not Agree To Voluntarily Enter Treatment:
 - i. A one-time offense may be resolved with Probation if the physical or mental health issue is treatable and remediable.
 - ii. Repetitive or egregious offenses involving a physical or mental health issue that is unlikely to be remediated may result in Suspension, Revocation or Voluntary Surrender of License.
19. “Departures From The Standard Of Care Caused By Chemical Dependency Or Substance Abuse” includes those actions or omissions that violate A.R.S. § 32-1401(26)(f) or (g).
- a. A one-time offense may be resolved with Probation. A violation with a significant departure from the standard of care may result in a minimum of a Letter of Reprimand and Probation.
 - b. Repetitive or egregious offenses may result in a minimum of Decree of Censure and Probation. Suspension or Revocation may be appropriate in some cases.

R4-16-504. Aggravating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. Pattern of misconduct; multiple offenses;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the board;
5. Submission of false evidence, false statements or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

R4-16-505. Mitigating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Absence of prior disciplinary record;
2. Absence of dishonest or selfish motive;
3. Timely good faith effort to rectify consequences of misconduct;
4. Interim rehabilitation;
5. Remoteness of prior offenses; and
6. How much control the physician has of processes in the specific practice setting.