

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 EXEMPT RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

[R05-83]

PREAMBLE

1. Sections Affected

R4-16-501
R4-16-502
R4-16-503
R4-16-504
R4-16-505
Article 6
R4-16-601
R4-16-602
R4-16-603
R4-16-603
R4-16-604
R4-16-605
R4-16-606

Rulemaking Action

Renumber
Renumber
Renumber
Renumber
Renumber
New Article
Renumber
Renumber
Renumber
Amend
New Section
Renumber
Renumber

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

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

Implementing statute: A.R.S. §§ 32-1403(A)(2), (A)(3), (A)(5), and 32-1451

3. The effective date of the rules:

February 18, 2005

4. A list of all previous notices appearing in the *Register* addressing the exempt rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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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:

In this rulemaking, the agency:

- a. Amends a Section to reflect changes to statutory citations and additions to the statutory definition of "unprofessional conduct,"
- b. Creates a new Section on civil penalties, and
- c. Renumbers all Sections under a new Article.

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

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obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study for this rulemaking.

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:

Not applicable

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

The making and subsequent amendment to these Sections is exempt from the requirements of A.R.S. § 41-1055 by legislative mandate under Laws 2002, Ch. 37, § 6.

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

Not applicable

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

Not applicable

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

None

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

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

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ARTICLE ~~5~~ 6. DISCIPLINARY ACTIONS

Section

~~R4-16-501~~R4-16-601, Intent

~~R4-16-502~~R4-16-602, Application

~~R4-16-503~~R4-16-603, Acts of Unprofessional Conduct

~~R4-16-604~~ Civil Penalties

~~R4-16-504~~R4-16-605, Aggravating Factors Considered in Disciplinary Actions

~~R4-16-505~~R4-16-606, Mitigating Factors Considered in Disciplinary Actions

ARTICLE ~~5~~ 6. DISCIPLINARY ACTIONS

~~R4-16-501~~R4-16-601, Intent

No change

~~R4-16-502~~R4-16-602, Application

No change

~~R4-16-503~~R4-16-603, Acts of Unprofessional Conduct

A physician commits an act of unprofessional conduct when the physician violates one or more subsections of A.R.S. § 32-1401(~~26~~)(27). 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~~)(27)(a), (d), ~~or~~ (s), or (tt).
 - 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~~)(27)(m), (t), (v), (aa), (bb), (jj), (mm), ~~or~~ (qq), or (uu).
 - 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.

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- 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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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 a Letter of Reprimand.
11. "Violations of Board Orders" includes those actions or omissions that violate A.R.S. § 32-1401~~(26)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(cc).

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- 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)~~(27)(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)~~(27)(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)~~(27)(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)~~(27)(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.
 - 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)~~(27)(f) or (g).

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- 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~~R4-16-604.Civil Penalties

Commission of the following acts of unprofessional conduct will result in the Board considering whether to impose a civil penalty in the range set by A.R.S. § 32-1451(K). These acts will generally result in a physician receiving financial gain that would not have been received had the physician been compliant with the Medicare Practice Act. This list is not exclusive, and the Board may impose civil penalties for other acts of unprofessional conduct depending on the circumstances of the statutory violation:

1. A.R.S. § 32-1401(27)(c): False, fraudulent, deceptive, or misleading advertising by a doctor of medicine or the doctor's staff, employer, or representative.
2. A.R.S. § 32-1401(27)(j): Prescribing, dispensing, or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
3. A.R.S. § 32-1401(27)(m): Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment, or infirmity can be cured by a secret method, procedure, treatment, medicine, or device if such is not the fact.
4. A.R.S. § 32-1401(27)(u): Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect.
5. A.R.S. § 32-1401(27)(v): Obtaining a fee by fraud, deceit, or misrepresentation.
6. A.R.S. § 32-1401(27)(w): Charging or collecting a clearly excessive fee. In determining if a fee is clearly excessive, the Board shall consider the fee or range or fees customarily charged in the state for similar services, in light of modifying factors such as the time required, the complexity of the service, and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.
7. A.R.S. § 32-1401(27)(aa): Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation, or by knowingly taking advantage of the mistake of another person or an agency.
8. A.R.S. § 32-1401(27)(bb): Representing or holding oneself out as being a medical specialist when such is not the fact.
9. A.R.S. § 32-1401(27)(cc): Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.
10. A.R.S. § 32-1401(27)(ff): Knowingly failing to disclose to a patient on a form that is prescribed by the Board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in non-routine goods or services that the patient is being prescribed and if the prescribed treatment, goods, or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.
11. A.R.S. § 32-1401(27)(hh): Prescribing, dispensing, or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.
12. A.R.S. § 32-1401(27)(mm): The representation by a doctor of medicine or the doctor's staff, employer, or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization, or entity granting this standing.
13. A.R.S. § 32-1401(27)(ss): Prescribing, dispensing, or furnishing a prescription medication or prescription-only device as defined under A.R.S. § 32-1901 to a person unless the licensee first conducts a physical examination of that person or has a previously established doctor-patient relationship. This subsection does not apply to:
 - a. A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed healthcare professional;
 - b. An emergency medical situation as defined under A.R.S. § 41-1831;
 - c. A prescription written to prepare a patient for a medical examination; or
 - d. A prescription written or prescription medication issued for use by a county or tribal public health department for immunization programs, for emergency treatment, or in response to an infectious disease investigation, public health emergency, infectious disease outbreak, or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning as prescribed under A.R.S. § 36-781.

~~R4-16-504~~R4-16-605.Aggravating Factors Considered in Disciplinary Actions

No change

~~R4-16-505~~R4-16-606. Mitigating Factors Considered in Disciplinary Actions

No change