

House Engrossed Senate Bill

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 214

SENATE BILL 1199

AN ACT

AMENDING SECTIONS 32-1451 AND 32-1451.01, 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 32-1451, Arizona Revised Statutes, is amended to
3 read:

4 32-1451. Grounds for disciplinary action; duty to report;
5 immunity; proceedings; board action; notice
6 requirements

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

28 B. The chief executive officer, the medical director or the medical
29 chief of staff of a health care institution shall inform the board if the
30 privileges of a doctor to practice in that health care institution are
31 denied, revoked, suspended or limited because of actions by the doctor that
32 appear to show that the doctor is or may be medically incompetent, is or may
33 be guilty of unprofessional conduct or is or may be mentally or physically
34 unable to safely engage in the practice of medicine, along with a general
35 statement of the reasons, including patient chart numbers, that led the
36 health care institution to take the action. The chief executive officer, the
37 medical director or the medical chief of staff of a health care institution
38 shall inform the board if a doctor under investigation resigns or if a doctor
39 resigns in lieu of disciplinary action by the health care institution.
40 Notification shall include a general statement of the reasons for the
41 resignation, including patient chart numbers. The board shall inform all
42 appropriate health care institutions in this state as defined in section
43 36-401 and the Arizona health care cost containment system ADMINISTRATION of
44 a resignation, denial, revocation, suspension or limitation, and the general

1 reason for that action, without divulging the name of the reporting health
2 care institution. A person who reports information in good faith pursuant
3 to this subsection is not subject to civil liability.

4 C. The board or, if delegated by the board, the executive director
5 shall require any combination of mental, physical or oral or written medical
6 competency examinations and conduct necessary investigations including
7 investigational interviews between representatives of the board and the
8 doctor to fully inform itself with respect to any information filed with the
9 board under subsection A of this section. These examinations may include
10 biological fluid testing. The board or, if delegated by the board, the
11 executive director may require the doctor, at the doctor's expense, to
12 undergo assessment by a board approved rehabilitative, retraining or
13 assessment program.

14 D. If the board finds, based on the information it receives under
15 subsections A and B of this section, that the public health, safety or
16 welfare imperatively requires emergency action, and incorporates a finding
17 to that effect in its order, the board may order a summary suspension of a
18 license pending proceedings for revocation or other action. If the board
19 takes this action it shall also serve the licensee with a written notice that
20 states the charges and that the licensee is entitled to a formal hearing
21 before the board or an administrative law judge within sixty days.

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

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

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

31 F. If the board finds that it can take rehabilitative or disciplinary
32 action without the presence of the doctor at a formal interview it may enter
33 into a consent agreement with the doctor to limit or restrict the doctor's
34 practice or to rehabilitate the doctor, protect the public and ensure the
35 doctor's ability to safely engage in the practice of medicine. The board may
36 also require the doctor to successfully complete a board approved
37 rehabilitative, retraining or assessment program.

38 ~~G. If after completing its investigation the board believes that the~~
39 ~~information is or may be true, it may request a formal interview with the~~
40 ~~doctor. IF REQUESTED, THE BOARD SHALL NOT DISCLOSE THE NAME OF THE PERSON~~
41 ~~WHO PROVIDED INFORMATION REGARDING A LICENSEE'S DRUG OR ALCOHOL IMPAIRMENT~~
42 ~~OR THE NAME OF THE PERSON WHO FILES A COMPLAINT IF THAT PERSON REQUESTS~~
43 ANONYMITY.

1 H. AT LEAST TEN BUSINESS DAYS BEFORE THE FORMAL INTERVIEW CONDUCTED
2 PURSUANT TO THIS SECTION, THE BOARD SHALL NOTIFY THE DOCTOR AND, AT THE
3 DOCTOR'S REQUEST, THE BOARD SHALL PROVIDE THE DOCTOR WITH THE INFORMATION
4 LISTED IN THIS SUBSECTION. THE DOCTOR AND THE DOCTOR'S ATTORNEY MAY NOT
5 RELEASE ANY INFORMATION OBTAINED UNDER THIS SECTION TO ANY OTHER PERSON. THE
6 BOARD SHALL PROVIDE THE FOLLOWING INFORMATION TO THE DOCTOR OR THE DOCTOR'S
7 ATTORNEY:

8 1. ANY REVIEW CONDUCTED BY AN EXPERT OR CONSULTANT PROVIDING AN
9 EVALUATION OF OR OPINION ON THE ALLEGATIONS.

10 2. ANY RECORDS ON THE PATIENT OBTAINED BY THE BOARD FROM OTHER HEALTH
11 CARE PROVIDERS.

12 3. THE RESULTS OF ANY EVALUATIONS OR TESTS OF THE DOCTOR CONDUCTED AT
13 THE BOARD'S DIRECTION.

14 4. ANY OTHER FACTUAL INFORMATION THAT THE BOARD WILL USE IN MAKING ITS
15 DETERMINATION.

16 I. IF AFTER COMPLETING ITS INVESTIGATION THE BOARD BELIEVES THAT THE
17 INFORMATION IS OR MAY BE TRUE, IT MAY REQUEST A FORMAL INTERVIEW WITH THE
18 DOCTOR. If the doctor refuses the invitation FOR FORMAL INTERVIEW or accepts
19 and the results indicate that grounds may exist for revocation or suspension
20 of the doctor's license for more than twelve months, the board shall issue
21 a formal complaint and order that a hearing be held pursuant to title 41,
22 chapter 6, article 10. If after completing a formal interview the board
23 finds that the protection of the public requires emergency action, it may
24 order a summary suspension of the license pending formal revocation
25 proceedings or other action authorized by this section.

26 J. If after completing the formal interview the board finds the
27 information provided under subsection A of this section is not of sufficient
28 seriousness to merit suspension for more than twelve months or revocation of
29 the license, it may take the following actions:

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

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

35 3. File a letter of reprimand.

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

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

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

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

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

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

22 ~~J.~~ M. An advisory letter is a public document.

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

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

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

40 ~~N.~~ Q. If the board's chairperson determines that a backlog of
41 complaints exists the chairperson may divide the board into two six member
42 review committees. Each of these committees shall select a
43 chairperson. Four members constitute a quorum for each committee. The

1 committees shall review complaints not dismissed by the executive director
2 and may take the following actions:

3 1. Dismiss the complaint if a committee determines that it is without
4 merit.

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

8 3. Refer the matter for further review by the full board.

9 ~~Q.~~ R. All monies collected from civil penalties paid pursuant to
10 this chapter shall be deposited in the state general fund.

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

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

24 ~~R.~~ U. The board may accept the surrender of an active license from
25 a person who admits in writing to any of the following:

26 1. Being unable to safely engage in the practice of medicine.

27 2. Having committed an act of unprofessional conduct.

28 3. Having violated this chapter or a board rule.

29 Sec. 2. Section 32-1451.01, Arizona Revised Statutes, is amended to
30 read:

31 32-1451.01. Right to examine and copy evidence; witnesses;
32 documents; testimony; representation

33 A. In connection with the investigation by the board on its own
34 motion, or as the result of information received pursuant to section 32-1451,
35 subsection A, the board or its duly authorized agents or employees at all
36 reasonable times may examine and copy any documents, reports, records or
37 other physical evidence of the person it is investigating or that is in
38 possession of any hospital, clinic, physician's office, laboratory, pharmacy,
39 public or private agency, health care institution as defined in section
40 36-401 and health care provider and that relates to medical competence,
41 unprofessional conduct or the mental or physical ability of a licensee to
42 safely practice medicine.

43 B. For the purpose of all investigations and proceedings conducted by
44 the board:

1 1. The board on its own initiative or on application of any person
2 involved in the investigation may issue subpoenas to require the attendance
3 and testimony of witnesses or to demand the production for examination or
4 copying of documents or any other physical evidence that relates to medical
5 competence, unprofessional conduct or the mental or physical ability of a
6 licensee to safely practice medicine. Within five days after a person is
7 served with a subpoena that person may petition the board to revoke, limit
8 or modify the subpoena. The board shall do so if in its opinion the evidence
9 required does not relate to unlawful practices covered by this chapter, is
10 not relevant to the charge that is the subject matter of the hearing or
11 investigation or does not describe with sufficient particularity the physical
12 evidence whose production is required. Any member of the board or any agent
13 designated by the board may administer oaths or affirmations, examine
14 witnesses and receive evidence.

15 2. Any person appearing before the board may be represented by
16 counsel.

17 3. On application by the board or by the person subpoenaed, the
18 superior court may issue an order to either:

19 (a) Require the subpoenaed person to appear before the board or the
20 duly authorized agent to produce evidence relating to the matter under
21 investigation.

22 (b) Revoke, limit or modify the subpoena if in the court's opinion the
23 evidence demanded does not relate to unlawful practices covered by this
24 chapter, is not relevant to the charge which is the subject matter of the
25 hearing or investigation or does not describe with sufficient particularity
26 the evidence whose production is required.

27 C. Patient records, including clinical records, medical reports,
28 laboratory statements and reports, any file, film, other report or oral
29 statement relating to diagnostic findings or treatment of patients, any
30 information from which a patient or the patient's family might be identified
31 or any information received and records or reports kept by the board as a
32 result of the investigation procedure outlined in this chapter are not
33 available to the public. AT THE DOCTOR'S REQUEST, THE BOARD SHALL PROVIDE
34 TO THE DOCTOR AND THE DOCTOR'S ATTORNEY THE INFORMATION LISTED IN SECTION
35 32-1451. A PERSON WHO OBTAINS INFORMATION FROM THE BOARD PURSUANT TO THIS
36 SUBSECTION SHALL NOT RELEASE IT TO ANY OTHER PERSON OR ENTITY OR USE IT IN
37 ANY PROCEEDING OR ACTION EXCEPT THE FORMAL INTERVIEW AND ANY ADMINISTRATIVE
38 PROCEEDINGS OR APPEALS RELATED TO THE FORMAL INTERVIEW. THE BOARD MAY CHARGE
39 THE PHYSICIAN OR THE PHYSICIAN'S ATTORNEY FOR THE COST OF THE INFORMATION
40 LISTED IN SECTION 32-1451 UP TO THE FEE FOR MAKING A COPY OF EACH PAGE AS
41 PRESCRIBED BY SECTION 12-284, SUBSECTION A.

42 D. This section and any other law making communications between a
43 physician and a physician's patient privileged does not apply to
44 investigations or proceedings conducted pursuant to this chapter. The board

1 and its employees, agents and representatives shall keep in confidence the
2 names of any patients whose records are reviewed during the course of
3 investigations and proceedings pursuant to this chapter.

4 E. Hospital records, medical staff records, medical staff review
5 committee records and testimony concerning these records and proceedings
6 related to the creation of these records are not available to the public,
7 shall be kept confidential by the board and are subject to the same
8 provisions concerning discovery and use in legal actions as are the original
9 records in the possession and control of hospitals, their medical staffs and
10 their medical staff review committees. The board shall use such records and
11 testimony during the course of investigations and proceedings pursuant to
12 this chapter.

13 F. The court may find a person who does not comply with a subpoena
14 issued pursuant to this section in contempt of court.

APPROVED BY THE GOVERNOR APRIL 24, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2001.

ON RECONSIDERATION

Passed the House April 16, 2001,

~~Passed the Senate _____, 20____,~~

by the following vote: 51 Ayes,

~~by the following vote: _____ Ayes,~~

6 Nays, 3 Not Voting

~~_____ Nays, _____ Not Voting~~

[Signature]
Speaker of the House

~~_____~~
President of the Senate

[Signature]
Chief Clerk of the House

~~_____~~
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State
this _____ day of _____, 20____, S

at _____ o'clock _____ M.

Secretary of State

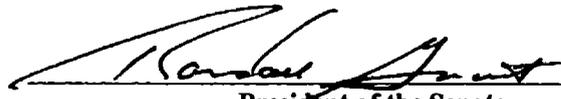
S.B. 1199

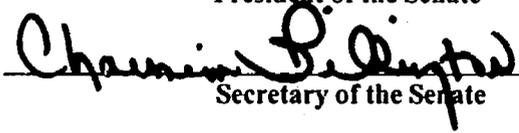
SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 2001

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting



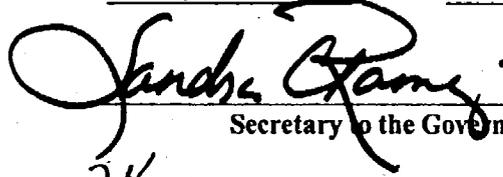
President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
19 day of April, 2001,

at 4:00 o'clock P M.



Secretary to the Governor

APPROVED THIS 24 day of

April, 2001,

at 2:55 o'clock P M.

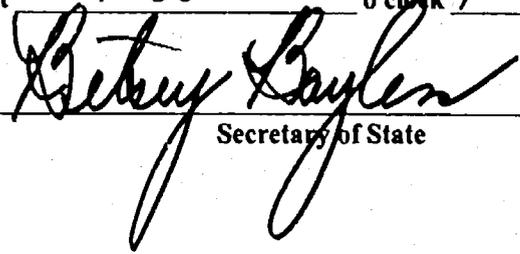


Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 24 day of April, 2001,

at 4:50 o'clock P M.



Secretary of State

S.B. 1199