

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 270  
**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  
8 in title 20, chapter 6, article 4 or 5, any person who is issued a  
9 certificate of authority pursuant to title 20, chapter 4, article 9 or any  
10 other partnership, association or corporation which THAT provides health care  
11 to 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  
18 by 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  
25 a 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  
4 a 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  
5 if a fee is clearly excessive, THE BOARD SHALL CONSIDER the fee or range of  
6 fees customarily charged in the state for similar services ~~shall be~~  
7 ~~considered by the board,~~ in light of modifying factors, such as the time  
8 required, the complexity of the service and the skill requisite to perform  
9 the service properly. This subdivision does not apply if there is a clear  
10 written contract for a fixed fee between the physician and the patient which  
11 THAT has 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  
42 or its investigators or representatives if legally requested by the board.

43 (ee) Failing to allow properly authorized board personnel on demand  
44 to examine and have access to documents, reports and records maintained by  
45 the 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  
38 a 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  
46 of 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  
3 a 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  
21 a 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  
30 or 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  
34 a 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  
12 to 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  
26 to 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  
38 without 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  
10 of the public requires emergency action, it may order a summary suspension  
11 of the license pending formal revocation proceedings or other action  
12 authorized by this section. If after completing the formal interview the  
13 board finds the information provided under subsection A of this section is  
14 not of sufficient seriousness to merit suspension for more than twelve months  
15 or 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  
25 or 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  
43 or G of this section warrants suspension or revocation of a license issued  
44 under this chapter, it shall initiate formal proceedings pursuant to title  
45 41, 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  
34 response with the board within thirty days after the licensee receives the  
35 advisory 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  
43 all monies collected from civil penalties paid pursuant to this chapter shall  
44 be deposited in the state general fund.

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

1 in 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  
 5 pursuant to an order by a court or the industrial commission is not subject  
 6 to a complaint for unprofessional conduct unless a complaint is made or  
 7 referred by a court or the industrial commission to the board. For purposes  
 8 of this subsection, "independent medical examination" means a professional  
 9 analysis 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		
22	46.5	52.5
23		
24	\$ 3,233,400	\$ 4,268,900
25	576,100	- 0 -
26	316,300	391,700
27	<u>16,500</u>	<u>16,500</u>
28		
29	\$ 4,142,300**	\$ 4,677,100
30		
31		
32	\$ 4,142,300	\$ 4,677,100

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

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

APPROVED BY THE GOVERNOR APRIL 30, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2001.

Passed the House February 12, 20 01,

Passed the Senate April 23, 20 01,

by the following vote: 55 Ayes,

by the following vote: 26 Ayes,

0 Nays, 5 Not Voting

1 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

1 vacancy

[Signature]  
Norman L. Moore  
Chief Clerk of the House

[Signature]  
Charmine Bellington  
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

H.B. 2412

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

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

at            o'clock            M.

            
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 25, 2001,

by the following vote: 49 Ayes,

8 Nays, 3 Not Voting

John Flake  
Speaker of the House  
Pro Tempore  
Sherman L. Moore  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

26 day of April, 2001,

8:55  
at \_\_\_\_\_ o'clock A M.

Jandra Ramirez  
Secretary to the Governor

Approved this 30 day of

April, 2001,

at 10:34 o'clock A M.

Janet Lee Hull  
Governor of Arizona

H.B. 2412

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 30 day of April, 2001,

at 4:50 o'clock P M.

Betsy Boyles  
Secretary of State