

Senate Engrossed

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

CHAPTER 88

SENATE BILL 1310

AN ACT

AMENDING SECTION 32-1451, 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
45 reason for that action, without divulging the name of the reporting health

1 care institution. A person who reports information in good faith pursuant
2 to this subsection is not subject to civil liability.

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

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

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

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

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

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

37 G. If after completing its investigation the board believes that the
38 information is or may be true, it may request a formal interview with the
39 doctor. If the doctor refuses the invitation or accepts and the results
40 indicate that grounds may exist for revocation or suspension of the doctor's
41 license for more than twelve months, the board shall issue a formal complaint
42 and order that a hearing be held pursuant to title 41, chapter 6, article 10.
43 If after completing a formal interview the board finds that the protection
44 of the public requires emergency action, it may order a summary suspension
45 of the license pending formal revocation proceedings or other action
46 authorized by this section. If after completing the formal interview the

1 board finds the information provided under subsection A of this section is
2 not of sufficient seriousness to merit suspension for more than twelve months
3 or revocation of the license, it may take the following actions:

4 1. Dismiss if, in the opinion of the board, the information is
5 without merit.

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

9 3. File a letter of reprimand.

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

14 5. Fix a period and terms of probation best adapted to protect the
15 public health and safety and rehabilitate or educate the doctor concerned.
16 Probation may include temporary suspension for not to exceed twelve months,
17 restriction of the doctor's license to practice medicine, a requirement for
18 restitution of fees to a patient or education or rehabilitation at the
19 licensee's own expense. If a licensee fails to comply with the terms of
20 probation the board shall serve the licensee with a written notice that
21 states that the licensee is subject to a formal hearing based on the
22 information considered by the board at the formal interview and any other
23 acts or conduct alleged to be in violation of this chapter or rules adopted
24 by the board pursuant to this chapter including noncompliance with the term
25 of probation, a consent agreement or a stipulated agreement.

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

30 H. If the board finds that the information provided in subsection A
31 or G of this section warrants suspension or revocation of a license issued
32 under this chapter, it shall initiate formal proceedings pursuant to title
33 41, chapter 6, article 10.

34 I. In a formal interview pursuant to subsection G of this section or
35 in a hearing pursuant to subsection H of this section, the board in addition
36 to any other action may impose a civil penalty in the amount of not less than
37 three hundred dollars nor more than ten thousand dollars for each violation
38 of this chapter or a rule adopted under this chapter.

39 J. An advisory letter is a public document.

40 K. Any doctor of medicine who after a formal hearing is found by the
41 board to be guilty of unprofessional conduct, to be mentally or physically
42 unable safely to engage in the practice of medicine or to be medically
43 incompetent is subject to censure, probation as provided in this section,
44 suspension of license or revocation of license or any combination of these,
45 including a stay of action, and for a period of time or permanently and under
46 conditions as the board deems appropriate for the protection of the public

1 health and safety and just in the circumstance. The board may charge the
2 costs of formal hearings to the licensee who it finds to be in violation of
3 this chapter.

4 L. If the board acts to modify any doctor of medicine's prescription
5 writing privileges the board shall immediately notify the state board of
6 pharmacy of the modification.

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

11 N. If the board's chairperson determines that a backlog of complaints
12 exists the chairperson may divide the board into two six member review
13 committees. Each of these committees shall select a chairperson. Four
14 members constitute a quorum for each committee. The committees shall review
15 complaints not dismissed by the executive director and may take the following
16 actions:

17 1. Dismiss the complaint if a committee determines that it is without
18 merit.

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

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

23 O. All monies collected from civil penalties paid pursuant to this
24 chapter shall be deposited in the state general fund.

25 P. Notice of a complaint and hearing is effective by a true copy of
26 it being sent by certified mail to the doctor's last known address of record
27 in the board's files. Notice of the complaint and hearing is complete on the
28 date of its deposit in the mail. The board shall begin a formal hearing
29 within one hundred twenty days of that date.

30 Q. A physician who submits an independent medical examination
31 pursuant to an order by a court or the industrial commission is not subject
32 to a complaint for unprofessional conduct unless a complaint is made or
33 referred by a court or the industrial commission to the board. For purposes
34 of this subsection, "independent medical examination" means a professional
35 analysis of medical status based on a person's past and present physical and
36 psychiatric history and conducted by a licensee or group of licensees on a
37 contract basis for a court or for the industrial commission.

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

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

41 2. Having committed an act of unprofessional conduct.

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

43 S. IN DETERMINING THE APPROPRIATE DISCIPLINARY ACTION UNDER THIS
44 SECTION, THE BOARD SHALL CONSIDER ALL PREVIOUS NONDISCIPLINARY AND
45 DISCIPLINARY ACTIONS AGAINST A LICENSEE.

APPROVED BY THE GOVERNOR APRIL 9, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2001.

Passed the House April 04, 2001,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate February 26, 2001,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2001,

at 1:07 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 9th day of

April, 2001,

at 11:55 o'clock A M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 9 day of April, 2001,

at 4:33 o'clock P M.
[Signature]
Secretary of State

S.B. 1310