

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 5

SENATE BILL 1173

AN ACT

AMENDING SECTIONS 32-1704, 32-1722, 32-1723, 32-1724 AND 32-1744, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 16, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1730; RELATING TO THE STATE BOARD OF OPTOMETRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1704, Arizona Revised Statutes, is amended to
3 read:

4 32-1704. Powers and duties of the board

5 A. The board shall adopt, and may amend, rules consistent with this
6 chapter governing the practice of the profession of optometry, for the
7 performance of its duties under this chapter and for the examination of
8 applicants for licenses. The board shall adopt and use a seal, administer
9 oaths and take testimony concerning any matter within its jurisdiction.

10 B. The board may not adopt a rule that:

11 1. Regulates a licensee's fees or charges to a patient.

12 2. Regulates the place in which a licensee may practice.

13 3. Prescribes the manner or method of accounting, billing or
14 collection of fees.

15 4. Prohibits advertising by a licensee unless the advertising is
16 inconsistent with section 44-1481.

17 C. The board shall maintain its records in accordance with a retention
18 schedule approved by the Arizona state library, archives and public records.

19 D. The board shall adopt rules for criteria it must use to approve
20 continuing education programs for licensees. Programs shall be designed to
21 assist licensees to maintain competency, to become aware of new developments
22 in the practice of the profession of optometry and to increase management
23 skills and administrative efficiency. The board shall approve programs that
24 meet these criteria.

25 E. The board may hire an executive director as an employee of the
26 board. The executive director is responsible for the performance of the
27 regular administrative functions of the board and such other administrative
28 duties as the board may direct. The executive director is eligible to
29 receive compensation in an amount as determined pursuant to section 38-611.

30 F. The board may hire or contract with investigators to assist in the
31 investigation of violations of this chapter, hire other employees required
32 to carry out this chapter and contract with other state agencies when
33 required to carry out this chapter.

34 G. The board may:

35 1. Appoint advisory committees.

36 2. Issue subpoenas for the attendance of witnesses and the production
37 of books, records, documents and other evidence it deems relevant to an
38 investigation or hearing.

39 3. Charge reasonable fees for materials it has printed at its own
40 expense.

41 4. Delegate to the executive director, board staff and persons with
42 whom the board contracts the board's licensing and regulatory duties. The
43 board shall adopt rules for each specific licensing and regulatory duty the
44 board delegates pursuant to this paragraph.

1 H. THE BOARD MAY HIRE CONSULTANTS AND PROFESSIONAL AND CLERICAL
2 PERSONNEL AS REQUIRED TO PERFORM ITS DUTIES.

3 I. THE BOARD MAY CONTRACT WITH OTHER STATE OR FEDERAL AGENCIES AS
4 REQUIRED TO CARRY OUT THIS CHAPTER.

5 J. SUBJECT TO THE LIMITATIONS OF SECTION 41-2544, THE EXECUTIVE
6 DIRECTOR MAY ENTER INTO AGREEMENTS TO ALLOW LICENCEES TO PAY FEES BY
7 ALTERNATIVE METHODS, INCLUDING CREDIT CARDS, CHARGE CARDS, DEBIT CARDS AND
8 ELECTRONIC FUNDS TRANSFERS.

9 ~~H. K. A person who is aggrieved by an action taken by the executive~~
10 ~~director, board staff or person with whom the board contracts may request the~~
11 ~~board to review that action by filing with the board a written request within~~
12 ~~thirty days after that person is notified of the executive director's action~~
13 ~~by personal delivery or certified mail to that person's last known residence~~
14 ~~or place of business. At the next regular board meeting, the board shall~~
15 ~~review the action taken by the executive director, board staff or person with~~
16 ~~whom the board contracts. On review, the board shall AND approve, modify or~~
17 ~~reject the action.~~

18 Sec. 2. Section 32-1722, Arizona Revised Statutes, is amended to read:
19 32-1722. Qualifications of applicant; applications

20 A. A person of good moral character who desires to engage in the
21 practice of the profession of optometry shall file with the board not less
22 than thirty days before the date on which an examination is to be held a
23 verified application with the required application fee that includes:

24 1. The applicant's name, age and address.

25 2. Documentation of graduation from a university or college that
26 teaches the profession of optometry and that is accredited by a nationally
27 accepted accrediting body on optometric education.

28 3. Documentation of satisfactory completion of an equivalent course
29 of study that is approved by the board in didactic education, pharmacology
30 and clinical training in the examination, diagnosis and treatment of
31 conditions of the human eye and its adnexa that either:

32 (a) Meets the contemporary educational requirements at colleges of
33 optometry in the United States.

34 (b) Totals at least one hundred twenty hours.

35 4. Documentation of the successful passage of a written examination
36 as prescribed by the board.

37 5. Background information on a form prescribed by the attorney general
38 for the purpose of conducting an investigation into the existence of prior
39 arrests and convictions. ~~The applicant shall submit a full set of~~
40 ~~fingerprints to the board. The board shall submit the fingerprints to the~~
41 ~~department of public safety for the purpose of obtaining a state and federal~~
42 ~~criminal records check pursuant to section 41-1750 and Public Law~~
43 ~~92-544. The department of public safety may exchange this fingerprint data~~
44 ~~with the federal bureau of investigation.~~

1 6. Disclosure of any investigation conducted or pending by an
2 optometric regulatory board in another jurisdiction in the United States.

3 B. On receipt of an application in proper form and containing the
4 information prescribed in subsection A of this section, the board may
5 investigate the applicant's character, ability and experience.

6 C. For the purposes of an investigation that is conducted pursuant to
7 subsection B of this section, the board may subpoena witnesses, administer
8 oaths and take testimony with respect to the character of the applicant or
9 to any matter affecting the application at a hearing held after sufficient
10 notice has been given.

11 D. If the board finds that the applicant has passed the examination
12 provided for under section ~~32-1723~~ or 32-1724 and that the applicant's
13 character, ability and experience are satisfactory, the board shall issue a
14 license.

15 Sec. 3. Section 32-1723, Arizona Revised Statutes, is amended to read:
16 32-1723. Licensure by endorsement

17 The board shall waive the written examination requirements of this
18 chapter if all of the following are true:

19 1. The applicant submits a license or a certified copy of a license
20 to practice optometry issued by the regulatory board of another jurisdiction
21 of the United States that has licensure requirements that the board
22 determines meet or exceed the requirements of this chapter.

23 ~~2. The applicant passes a practical examination as determined by the~~
24 ~~board.~~

25 ~~3.~~ 2. The license of the applicant has not been suspended or revoked
26 by any other licensing jurisdiction of the United States for any cause that
27 is a ground for suspension or revocation of a license under this chapter.

28 ~~4. The applicant has not previously failed to pass the examination in~~
29 ~~this state after the applicant's admission to practice in the other licensing~~
30 ~~jurisdiction.~~

31 ~~5.~~ 3. The applicant has been engaged in the practice of the
32 profession of optometry continuously in the other licensing jurisdiction for
33 not less than four of the five years immediately preceding the application
34 OR IN THE MILITARY.

35 ~~6.~~ 4. The information provided by national data banks designated by
36 the board has successfully verified the applicant.

37 ~~7. The applicant offers proof of satisfactory completion of an~~
38 ~~equivalent course of study in clinical pharmacology that is approved by the~~
39 ~~board and that meets the contemporary educational requirements at colleges~~
40 ~~of optometry in the United States or that totals at least one hundred twenty~~
41 ~~hours.~~

42 ~~8. The applicant offers proof of passing an examination approved by~~
43 ~~the board in the treatment and management of ocular disease.~~

44 ~~9.~~ 5. The applicant meets the requirements of section 32-1722
45 concerning good moral character.

1 Sec. 4. Section 32-1724, Arizona Revised Statutes, is amended to read:
2 32-1724. Examination of applicants; time of examination

3 A. Licensing examinations shall be conducted and graded according to
4 rules prescribed by the board. The board shall not grade examinations on a
5 curve.

6 B. The board may give applicants a written examination on subjects
7 currently being taught in universities or colleges of optometry as well as
8 on this state's statutes and rules relating to the practice of optometry. In
9 lieu of its written examination for licensure, the board may accept
10 documentation from the national board of examiners in optometry that shows
11 that an applicant has passed board designated parts of the national board's
12 examination ~~not more than five years before January 1 of the year the~~
13 ~~applicant applies for licensure pursuant to section 32-1722.~~ To receive a
14 passing grade on a written examination administered by the board, an
15 applicant shall receive a grade of not less than seventy-five per cent on the
16 whole written examination and not less than fifty per cent in any one
17 subject.

18 C. The board may give applicants a practical examination on subjects
19 currently being taught in universities or colleges of optometry and shall
20 give an examination on this state's statutes and rules relating to optometry.
21 IN LIEU OF ITS PRACTICAL EXAMINATION FOR LICENSURE, THE BOARD MAY ACCEPT
22 DOCUMENTATION FROM THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY THAT SHOWS
23 THAT THE APPLICANT HAS PASSED BOARD DESIGNATED PARTS OF THE NATIONAL BOARD'S
24 EXAMINATION. To receive a passing grade on a practical examination, an
25 applicant shall receive a grade of not less than seventy-five per cent.

26 D. Examinations shall be held at least once each year ~~in this state~~
27 ~~at times and places the board designates.~~ Notice of examinations shall be
28 given not less than sixty days before the date of examination. The board
29 shall adopt rules to establish conditions under which an applicant who is
30 unable to take the examination and who notifies the board before the date
31 fixed for the examination may take the next examination.

32 Sec. 5. Title 32, chapter 16, article 2, Arizona Revised Statutes, is
33 amended by adding section 32-1730, to read:

34 32-1730. Fingerprinting

35 A. EACH APPLICANT FOR LICENSURE AND LICENSE REINSTATEMENT PURSUANT TO
36 THIS CHAPTER SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE BOARD FOR THE
37 PURPOSE OF OBTAINING A STATE AND FEDERAL CRIMINAL RECORDS CHECK PURSUANT TO
38 SECTION 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY
39 EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION.

40 B. IF THE BOARD DOES NOT HAVE ANY EVIDENCE OR REASONABLE SUSPICION
41 THAT THE APPLICANT HAS A CRIMINAL HISTORY, THE BOARD MAY ISSUE A LICENSE
42 BEFORE IT RECEIVES THE RESULTS OF A CRIMINAL RECORDS CHECK.

43 C. THE BOARD SHALL SUSPEND A LICENSE OF A PERSON WHO SUBMITS AN
44 UNREADABLE SET OF FINGERPRINTS AND DOES NOT SUBMIT A NEW READABLE SET OF
45 FINGERPRINTS WITHIN TWENTY DAYS AFTER BEING NOTIFIED BY THE BOARD TO DO SO.

1 D. THIS SECTION DOES NOT AFFECT THE BOARD'S AUTHORITY TO OTHERWISE
2 ISSUE, DENY, CANCEL, TERMINATE, SUSPEND OR REVOKE A LICENSE.

3 Sec. 6. Section 32-1744, Arizona Revised Statutes, is amended to read:
4 32-1744. Board investigations; duty to report violations;
5 hearing; decision of board; informal settlement
6 conference

7 A. The board on its own motion shall investigate any evidence that
8 appears to show that a licensee may be guilty of a violation of section
9 32-1743. Any person may report to the board information the person may have
10 that appears to show that a licensee may be guilty of unprofessional conduct
11 or of practice without regard for the safety and welfare of the public. A
12 person who reports or provides information to the board in good faith is not
13 subject to civil damages as a result, and the name of the person reporting
14 shall not be disclosed unless the information is necessary to conduct an
15 investigation or is essential to disciplinary proceedings conducted pursuant
16 to this section.

17 B. THE BOARD, ITS DESIGNEE OR THE EXECUTIVE DIRECTOR SHALL REQUIRE A
18 LICENSEE TO PROVIDE A WRITTEN RESPONSE TO A COMPLAINT WITHIN TWENTY DAYS
19 AFTER THE LICENSEE RECEIVES THE NOTIFICATION OF COMPLAINT.

20 ~~B.~~ C. Except as provided in subsection ~~D~~ E of this section, if in
21 the opinion of the board it appears that information provided under
22 subsection A of this section may be accurate and a violation of this chapter,
23 the board shall request an informal interview with the licensee before
24 proceeding to a formal hearing. If the licensee refuses an invitation for
25 an informal interview, or if the licensee accepts the invitation and if the
26 results of the interview indicate suspension or revocation of license may be
27 in order, a complaint shall be issued and a formal hearing held pursuant to
28 title 41, chapter 6, article 10. If at the informal interview the board
29 finds the information provided under subsection A of this section is accurate
30 but not of sufficient seriousness to merit suspension exceeding thirty days
31 or revocation of the license, it may take any or all of the following
32 actions:

- 33 1. Issue a decree of censure or written reprimand.
- 34 2. Fix a period and terms of probation best adapted to protect the
35 public health and safety and rehabilitate the licensee. Probation may
36 include a requirement for a refund of fees and charges to professional
37 services clients resulting from services performed in violation of this
38 chapter or rules adopted pursuant to this chapter, restriction of a license
39 to practice or temporary suspension not to exceed thirty days. Failure to
40 comply with probation is cause for filing a complaint and holding a formal
41 hearing pursuant to title 41, chapter 6, article 10.

42 3. Impose a civil penalty of not more than one thousand dollars for
43 each violation of this chapter.

44 ~~C.~~ D. If the board determines that a reasonable basis exists to
45 believe that a violation of this chapter or rules adopted pursuant to this

1 chapter has occurred and the violation is not sufficiently serious to warrant
2 disciplinary action, it may send a letter of concern to the licensee. The
3 letter of concern shall advise the licensee of the possible violation and the
4 board's decision not to initiate proceedings. If violations occur after the
5 board sends a letter of concern, the board may initiate proceedings on all
6 violations, including the violation that was the subject of the letter of
7 concern.

8 ~~D.~~ E. If in the opinion of the board it appears that information
9 provided under subsection A of this section may be accurate, the board may
10 issue a complaint and hold a formal hearing pursuant to title 41, chapter 6,
11 article 10 without first holding an informal interview if the probable
12 violation involves one or more of the following:

- 13 1. Gross negligence.
- 14 2. Fraud, forgery, unsworn falsification, false swearing or perjury.
- 15 3. Three or more repeated offenses.
- 16 4. Conviction of a felony.
- 17 5. Conviction of an offense involving moral turpitude.
- 18 6. Incompetence.
- 19 7. Failing to comply with a board order or consent agreement.
- 20 8. Wilfully and without legal justification failing to furnish in a
21 timely manner information necessary for the board to conduct an investigation
22 under this chapter that has been requested or subpoenaed by the board.

23 ~~E.~~ F. The board shall serve on the licensee a notice fully setting
24 forth the conduct or inability concerned and returnable at a hearing to be
25 held before the board or an administrative law judge in not less than thirty
26 days, stating the time and place of the hearing.

27 ~~F.~~ G. The board may require a mental and physical examination and
28 make an investigation, including, if necessary, the issuance of subpoenas,
29 the appointment of advisory committees, the employment of expert witnesses,
30 the taking of depositions or otherwise, as may be required fully to inform
31 itself with respect to the complaint.

32 ~~G.~~ H. A person may file a motion with the board for an expedited
33 hearing pursuant to section 41-1092.05.

34 ~~H.~~ I. If the licensee wishes to be present at the hearing in person
35 or by representation, or both, the licensee shall file with the board an
36 answer to the charges in the complaint. The answer shall be in writing,
37 verified under oath and filed within twenty days after service of the summons
38 and complaint.

39 ~~I.~~ J. At the hearing held in compliance with subsection ~~E~~ F of this
40 section, a licensee may be present in person together with any counsel and
41 witnesses the licensee chooses.

42 ~~J.~~ K. The board shall issue subpoenas for witnesses it may need and,
43 at the respondent's expense, for witnesses the respondent may request. All
44 provisions of law compelling a person under subpoena to testify are
45 applicable to a hearing held pursuant to this section.

1 ~~K~~. L. The board shall serve every notice or decision under this
2 article by any method reasonably calculated to effect actual notice on the
3 board and every other party to the action to the party's last address of
4 record with the board. Each party shall inform the board of any change of
5 address within five days after the change.

6 ~~L~~. M. A licensee who, after a hearing, is found to be guilty by the
7 board of a violation of this chapter is subject to censure, probation or
8 civil penalty as provided in subsection ~~B~~ C of this section, suspension of
9 license or revocation of license, or any combination of these, and for the
10 period of time or permanently and under the conditions the board deems
11 appropriate for the protection of the public health and safety and just in
12 the circumstances. The board may charge the costs of formal hearings to the
13 licensee who is in violation of this chapter.

14 ~~M~~. N. The board shall issue a written decision within twenty days
15 after the hearing is concluded. The written decision shall contain a concise
16 explanation of the reasons supporting the decision. The board shall serve
17 a copy of the decision on the licensee. On the licensee's request, the board
18 shall also transmit to the licensee the record of the hearing.

19 ~~N~~. O. Except as provided in this subsection, all materials, documents
20 and evidence associated with a pending or resolved complaint or investigation
21 are confidential and are not public records. The following materials,
22 documents and evidence are not confidential and are public records if they
23 are related to resolved complaints and comply with subsection A of this
24 section:

- 25 1. The complaint.
- 26 2. The response and any rebuttal statements submitted by the licensee.
- 27 3. Written or recorded board discussions of the complaint.
- 28 4. Written reports of an investigation of a complaint.
- 29 5. Disposition of the complaint, including any written comments of the
30 board.

31 ~~O~~. P. This section or any other law making communications between a
32 licensee and the licensee's patient a privileged communication does not apply
33 to investigations or proceedings conducted pursuant to this chapter. The
34 board and its employees, agents and representatives shall keep in confidence
35 the names of any patients whose records are reviewed during the course of
36 investigations and proceedings pursuant to this chapter.

37 ~~P~~. Q. Any action of the board shall be included in the minutes of the
38 meeting at which the action is taken, including any determination by the
39 board not to proceed under this section. The person reporting information
40 to the board shall receive a copy of any final decision.

41 ~~Q~~. R. Pursuant to sections 35-146 and 35-147, the board shall deposit
42 civil penalties collected pursuant to this chapter in the state general fund.

43 ~~R~~. S. A licensee who is the subject of a disciplinary action may
44 request an informal settlement conference. The licensee must submit a
45 request for an informal settlement conference to the board in writing. The

1 board shall hold an informal settlement conference within fifteen days after
2 it receives a request to do so from the licensee. Only a person with the
3 authority to act on behalf of the board may represent the board at the
4 informal settlement conference. The board representative shall notify the
5 licensee in writing that any written or oral statement made by the licensee
6 at the informal settlement conference, including statements for the purpose
7 of settlement negotiations, is inadmissible in any subsequent hearing. A
8 licensee who participates in an informal settlement conference waives the
9 right to object to the participation of the board representative in the final
10 administrative decision.

APPROVED BY THE GOVERNOR MARCH 25, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 26, 2003.



Passed the House March 19, 20 03

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Sherman L. Moore
Chief Clerk of the House

Passed the Senate February 13, 20 03

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Chermin Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of March, 20 03

at 12:21 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 25 day of

March, 20 03

at 4:50 o'clock P M.

Jan Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 26 day of March, 20 03

at 2:55 o'clock P M.

Janice L. Brewer
Secretary of State

S.B. 1173