

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

CHAPTER 129

SENATE BILL 1010

AN ACT

AMENDING SECTIONS 12-562, 46-455 AND 46-456, ARIZONA REVISED STATUTES;
RELATING TO MEDICAL MALPRACTICE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-562, Arizona Revised Statutes, is amended to
3 read:

4 12-562. Medical malpractice actions; grounds

5 A. No A medical malpractice action shall NOT be brought against a
6 licensed health care provider except upon the grounds set forth in section
7 12-561.

8 B. No A medical malpractice action brought against a licensed health
9 care provider shall NOT be based upon assault and battery.

10 C. No A medical malpractice action based upon breach of contract for
11 professional services shall NOT be brought unless such contract is in
12 writing.

13 D. A MEDICAL MALPRACTICE ACTION BROUGHT AGAINST A PHYSICIAN LICENSED
14 PURSUANT TO TITLE 32, CHAPTER 13 OR 17, A PODIATRIST LICENSED PURSUANT TO
15 TITLE 32, CHAPTER 7, A REGISTERED NURSE PRACTITIONER LICENSED PURSUANT TO
16 TITLE 32, CHAPTER 15 OR A PHYSICIAN ASSISTANT LICENSED PURSUANT TO TITLE 32,
17 CHAPTER 25 REGARDING SERVICES PROVIDED WITHIN THAT PERSON'S SCOPE OF
18 PRACTICE, SHALL NOT BE BASED ON THE NEGLIGENCE, ABUSE OR EXPLOITATION OF AN
19 INCAPACITATED OR VULNERABLE ADULT EXCEPT AS PROVIDED IN SECTION 46-455.

20 Sec. 2. Section 46-455, Arizona Revised Statutes, is amended to read:

21 46-455. Permitting life or health of an incapacitated or
22 vulnerable adult to be endangered by neglect;
23 violation; classification; civil remedy; definition

24 A. A person who has been employed to provide care, who is a de facto
25 guardian or de facto conservator or who has been appointed by a court to
26 provide care to an incapacitated or vulnerable adult and who causes or
27 permits the life of the adult to be endangered or his THAT PERSON'S health
28 to be injured or endangered by neglect is guilty of a class 5 felony.

29 B. An incapacitated or vulnerable adult whose life or health is being
30 or has been endangered or injured by neglect, abuse or exploitation may file
31 an action in superior court against any person or enterprise that has been
32 employed to provide care, that has assumed a legal duty to provide care or
33 that has been appointed by a court to provide care to such incapacitated or
34 vulnerable adult for having caused or permitted such conduct. A PHYSICIAN
35 LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17, A PODIATRIST LICENSED
36 PURSUANT TO TITLE 32, CHAPTER 7, A REGISTERED NURSE PRACTITIONER LICENSED
37 PURSUANT TO TITLE 32, CHAPTER 15 OR A PHYSICIAN ASSISTANT LICENSED PURSUANT
38 TO TITLE 32, CHAPTER 25, WHILE PROVIDING SERVICES WITHIN THE SCOPE OF THAT
39 PERSON'S LICENSURE, IS NOT SUBJECT TO CIVIL LIABILITY FOR DAMAGES UNDER THIS
40 SECTION UNLESS EITHER:

41 1. AT THE TIME OF THE EVENTS GIVING RISE TO A CAUSE OF ACTION UNDER
42 THIS SECTION, THE PERSON WAS EMPLOYED OR RETAINED BY THE FACILITY OR
43 DESIGNATED BY THE FACILITY WITH THE CONSENT OF THE PERSON, TO SERVE THE
44 FUNCTION OF MEDICAL DIRECTOR AS THAT TERM IS DEFINED OR USED BY FEDERAL OR
45 STATE LAW GOVERNING A NURSING CARE INSTITUTION, AN ASSISTED LIVING CENTER,

1 AN ASSISTED LIVING FACILITY, AN ASSISTED LIVING HOME, AN ADULT DAY HEALTH
2 CARE FACILITY, A RESIDENTIAL CARE INSTITUTION, AN ADULT CARE HOME, A SKILLED
3 NURSING FACILITY OR A NURSING FACILITY.

4 2. AT THE TIME OF THE EVENTS GIVING RISE TO A CAUSE OF ACTION UNDER
5 THIS SECTION, ALL OF THE FOLLOWING APPLIED:

6 (a) THE PERSON WAS A PHYSICIAN LICENSED PURSUANT TO TITLE 32, CHAPTER
7 13 OR 17, A PODIATRIST LICENSED PURSUANT TO TITLE 32, CHAPTER 7, A REGISTERED
8 NURSE PRACTITIONER LICENSED PURSUANT TO TITLE 32, CHAPTER 15 OR A PHYSICIAN
9 ASSISTANT LICENSED PURSUANT TO TITLE 32, CHAPTER 25.

10 (b) THE PERSON WAS THE PRIMARY PROVIDER RESPONSIBLE FOR THE MEDICAL
11 SERVICES TO THE PATIENT WHILE THE PATIENT WAS AT ONE OF THE FACILITIES LISTED
12 IN SUBSECTION B, PARAGRAPH 1 OF THIS SECTION.

13 C. ANY PERSON WHO WAS THE PRIMARY PROVIDER OF MEDICAL SERVICES TO THE
14 PATIENT IN THE LAST TWO YEARS BEFORE IT WAS RECOMMENDED THAT THE PATIENT BE
15 ADMITTED TO ONE OF THE FACILITIES LISTED IN SUBSECTION B, PARAGRAPH 1 OF THIS
16 SECTION IS EXEMPT FROM CIVIL LIABILITY FOR DAMAGES UNDER THIS SECTION.

17 D. FOR THE PURPOSES OF THIS SECTION, "PRIMARY PROVIDER" DOES NOT
18 INCLUDE A CONSULTANT OR SPECIALIST AS LISTED IN SUBSECTION B, PARAGRAPH 2,
19 SUBDIVISION (a) OF THIS SECTION, WHO IS REQUESTED BY THE PRIMARY PROVIDER TO
20 PROVIDE CARE TO THE PATIENT FOR WHOM THE PRIMARY PROVIDER IS RESPONSIBLE
21 UNLESS THAT CONSULTANT OR SPECIALIST ASSUMES THE PRIMARY CARE OF THE PATIENT.

22 ~~E.~~ E. The state may file an action pursuant to this section on behalf
23 of those persons endangered or injured to prevent, restrain or remedy the
24 conduct described in this section.

25 ~~F.~~ F. The superior court has jurisdiction to prevent, restrain and
26 remedy the conduct described in this section, after making provision for the
27 rights of all innocent persons affected by such conduct and after a hearing
28 or trial, as appropriate, by issuing appropriate orders.

29 ~~G.~~ G. Prior to a determination of liability, the orders may include,
30 but are not limited to, entering restraining orders or temporary injunctions
31 or taking such other actions, including the acceptance of satisfactory
32 performance bonds, the creation of receiverships and the appointment of
33 qualified receivers and the enforcement of constructive trusts, as the court
34 deems proper.

35 ~~H.~~ H. After a determination of liability such orders may include, but
36 are not limited to:

37 1. Ordering any person to divest himself of any direct or indirect
38 interest in any enterprise.

39 2. Imposing reasonable restrictions, including permanent injunctions,
40 on the future activities or investments of any person including prohibiting
41 any person from engaging in the same type of endeavor or conduct to the
42 extent permitted by the constitutions of the United States and this state.

43 3. Ordering dissolution or reorganization of any enterprise.

1 4. Ordering the payment of actual and consequential damages, as well
2 as punitive damages, costs of suit and reasonable attorney fees, to those
3 persons injured by the conduct described in this section.

4 5. Ordering the payment of all costs and expenses of the prosecution
5 and investigation of the conduct described in this section, civil and
6 criminal, incurred by the state or county as appropriate to be paid to the
7 general fund of this state or the county which incurred such costs and
8 expenses.

9 ~~G.~~ I. A defendant convicted in any criminal proceeding is precluded
10 from subsequently denying the essential allegations of the criminal offense
11 of which he was convicted in any civil proceeding. For the purposes of this
12 subsection, a conviction may result from a verdict or plea, including a plea
13 of no contest.

14 ~~H.~~ J. A person who files an action under this section shall serve
15 notice and one copy of the pleading on the attorney general within thirty
16 days after the action is filed with the superior court. The notice shall
17 identify the action, the person and the person's attorney. Service of the
18 notice does not limit or otherwise affect the right of this state to maintain
19 an action under this section or intervene in a pending action nor does it
20 authorize the person to name this state or the attorney general as a party
21 to the action. Upon receipt of a complaint the attorney general shall notify
22 the appropriate licensing agency.

23 ~~I.~~ K. The initiation of civil proceedings pursuant to this section
24 shall be commenced within seven TWO years after actual discovery of the cause
25 of action.

26 ~~J.~~ L. The standard of proof in civil actions brought pursuant to this
27 section is the preponderance of the evidence.

28 ~~K.~~ M. Except in cases filed by a county attorney, the attorney
29 general may, upon timely application, intervene in any civil action or
30 proceeding brought under this section if the attorney general certifies that
31 in his opinion the action is of special public importance. Upon
32 intervention, the attorney general may assert any available claim and is
33 entitled to the same relief as if the attorney general had instituted a
34 separate action.

35 ~~L.~~ N. In addition to the state's right to intervene as a party in any
36 action under this section, the attorney general may appear as a friend of the
37 court in any proceeding in which a claim under this section has been asserted
38 or in which a court is interpreting section 46-453 or this section.

39 ~~M.~~ O. A civil action authorized by this section is remedial and not
40 punitive and does not limit and is not limited by any other civil remedy or
41 criminal action or any other provision of law. Civil remedies provided under
42 this title are supplemental and not mutually exclusive.

43 ~~N.~~ P. The cause of action or the right to bring a cause of action
44 pursuant to subsection B or ~~C~~ E of this section shall not be limited or
45 affected by the death of the incapacitated or vulnerable adult.

1 ~~0.~~ Q. In this section, "enterprise" means any corporation,
2 partnership, association, labor union, or other legal entity, or any group
3 of persons associated in fact although not a legal entity, which is involved
4 with providing care to an incapacitated or vulnerable adult.

5 Sec. 3. Section 46-456, Arizona Revised Statutes, is amended to read:

6 46-456. Duty to an incapacitated or vulnerable adult; financial
7 exploitation; civil and criminal penalties;
8 exceptions; definitions

9 A. A person who is in a position of trust and confidence to an
10 incapacitated or vulnerable adult shall act for the benefit of that person
11 to the same extent as a trustee pursuant to title 14, chapter 7, article 3.

12 B. A person who is in a position of trust and confidence and who by
13 intimidation or deception knowingly takes control, title, use or management
14 of an incapacitated or vulnerable adult's asset or property with the intent
15 to permanently deprive that person of the asset or property is guilty of
16 theft as provided in section 13-1802.

17 C. A person who violates subsection A or B of this section is subject
18 to damages in a civil action brought by or on behalf of an incapacitated or
19 vulnerable adult that equal up to three times the amount of the monetary
20 damages.

21 D. A person who violates subsection A or B of this section forfeits
22 all benefits with respect to the estate of the deceased, incapacitated or
23 vulnerable adult, including an intestate share, an elective share, an omitted
24 spouse's share, an omitted child's share, a homestead allowance, an exempt
25 property allowance and a family allowance. If the incapacitated or
26 vulnerable adult died intestate, the decedent's intestate estate passes as
27 if the person who committed the violation disclaimed that person's intestate
28 share.

29 E. The provisions of section 46-455, subsections ~~D~~, ~~E~~, F, G, ~~I~~, H, I,
30 ~~J~~, ~~M~~, K, L, M and ~~N~~, P also apply to civil violations of this section.

31 F. Subsections A, C, D and E of this section do not apply to an agent
32 that is any of the following:

33 1. A bank, financial institution or escrow agent licensed or certified
34 pursuant to title 6.

35 2. A securities dealer or salesman registered pursuant to title 44,
36 chapter 12, article 9.

37 3. An insurer, including a title insurer, authorized and regulated
38 pursuant to title 20.

39 G. For the purposes of this section:

40 1. "Deception" means that a person deceives an incapacitated or
41 vulnerable adult by knowingly doing any of the following:

42 (a) Creating or confirming a false impression in an incapacitated or
43 vulnerable adult's mind.

1 (b) Failing to correct a false impression that the person is
2 responsible for creating or confirming in an incapacitated or vulnerable
3 adult's mind.

4 (c) Making a promise to an incapacitated or vulnerable adult that the
5 person does not intend to perform or that the person knows will not or cannot
6 be performed. A person's failure to perform a promise is not by itself
7 sufficient proof that the person did not intend to perform the promise.

8 (d) Misrepresenting or concealing a material fact that relates to the
9 terms of a contract or an agreement that the person enters into with the
10 incapacitated or vulnerable adult or that relates to the existing or
11 preexisting condition of any of the property involved in a contract or an
12 agreement.

13 (e) Using any material misrepresentation, false pretense or false
14 promise to induce, encourage or solicit an incapacitated or vulnerable adult
15 to enter into a contract or an agreement.

16 2. "Intimidation" includes threatening to deprive an incapacitated or
17 vulnerable adult of food, nutrition, shelter or necessary medication or
18 medical treatment.

19 3. "Position of trust and confidence" means that a person is any of
20 the following:

21 (a) One who has assumed a duty to provide care to the incapacitated
22 or vulnerable adult.

23 (b) A joint tenant or a tenant in common with an incapacitated or
24 vulnerable adult.

25 (c) One who is in a fiduciary relationship with an incapacitated or
26 vulnerable adult including a de facto guardian or de facto conservator.

~~APPROVED BY THE GOVERNOR APRIL 30, 2003.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2003.~~

Passed the House April 15, 2003,

by the following vote: 36 Ayes,

19 Nays, 5 Not Voting

Passed the Senate March 19, 2003,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

John Blumenthal
President of the Senate

Charmine Bellinger
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

S.B. 1010

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

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 24, 2003

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Ken Blumenthal
President of the Senate
Charmia Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2003

at 8:15 o'clock A M.

Sandra Stoney
Secretary to the Governor

Approved this 30 day of

April, 2003,

at 4:25 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 1 day of May, 2003,

at 3:16 o'clock P. M.

Janice K. Brown
Secretary of State

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