House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 59

HOUSE BILL 2207

AN ACT

AMENDING SECTIONS 32-1401, 32-1403.01, 32-1451 AND 32-1452, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA MEDICAL BOARD.

(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 either:
16 (a) While there is insufficient evidence to support disciplinary
17 action the board believes that continuation of the activities that led to the
18 investigation may result in further board action against the licensee.
19 (b) The violation is a minor or technical violation that is not of
20 sufficient merit to warrant disciplinary action.
21 (c) While the licensee has demonstrated substantial compliance through
22 rehabilitation or remediation that has mitigated the need for disciplinary
23 action, the board believes that repetition of the activities that led to the
24 investigation may result in further board action against the licensee.
25 4. "Approved hospital internship, residency or clinical fellowship
26 program" means a program at a hospital that at the time the training occurred
27 was legally incorporated and that had a program that was approved for
28 internship, fellowship or residency training by the accreditation council for
29 graduate medical education, the association of American medical colleges, the
30 royal college of physicians and surgeons of Canada or any similar body in the
31 United States or Canada approved by the board whose function is that of
32 approving hospitals for internship, fellowship or residency training.
33 5. "Approved school of medicine" means any school or college offering
34 a course of study that, on successful completion, results in the degree of
35 doctor of medicine and whose course of study has been approved or accredited
36 by an educational or professional association, recognized by the board,
37 including the association of American medical colleges, the association of
38 Canadian medical colleges or the American medical association.
39 6. "Board" means the Arizona medical board.
40 7. "Completed application" means that the applicant has supplied all
41 required fees, information and correspondence requested by the board on forms
42 and in a manner acceptable to the board.
43 8. "Direct supervision" means that a physician, physician assistant
44 licensed pursuant to chapter 25 of this title or nurse practitioner certified
45 pursuant to chapter 15 of this title is within the same room or office suite

as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "LIMIT" MEANS A NONDISCIPLINARY ACTION THAT ALTERS THE PHYSICIAN'S PRACTICE OR PROFESSIONAL ACTIVITIES IF THE BOARD DETERMINES THAT THERE IS EVIDENCE THAT THE PHYSICIAN IS OR MAY BE MENTALLY OR PHYSICALLY UNABLE TO SAFELY ENGAGE IN THE PRACTICE OF MEDICINE.

~~15.~~ 16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

~~16.~~ 17. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

~~17.~~ 18. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five per cent on the written special purpose licensing examination administered by the board.

~~18.~~ 19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

~~19.~~ 20. "Physician" means a doctor of medicine licensed pursuant to this chapter.

~~20.~~ 21. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the holding of oneself out as being able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities, deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

22. "RESTRICT" MEANS A DISCIPLINARY ACTION THAT ALTERS THE PHYSICIAN'S PRACTICE OR PROFESSIONAL ACTIVITIES IF THE BOARD DETERMINES THAT THERE IS EVIDENCE THAT THE PHYSICIAN IS OR MAY BE MEDICALLY INCOMPETENT OR GUILTY OF UNPROFESSIONAL CONDUCT.

~~21.~~ 23. "Special purpose licensing examination" means an examination developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician under investigation by a state licensing board.

~~22.~~ 24. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.

~~23.~~ 25. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

~~24.~~ 26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws or rules and regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) Habitual intemperance in the use of alcohol or habitual substance abuse.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the non-therapeutic use of injectable amphetamines.

(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(k) Signing a blank, undated or predated prescription form.

(l) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(m) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if such is not the fact.

(n) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.

(p) Sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the

1 practice of medicine or restricting that person's ability to obtain financial
2 remuneration.
3 (q) Any conduct or practice that is or might be harmful or dangerous
4 to the health of the patient or the public.
5 (r) Violating a formal order, probation, consent agreement or
6 stipulation issued or entered into by the board or its executive director
7 under the provisions of this chapter.
8 (s) Violating or attempting to violate, directly or indirectly, or
9 assisting in or abetting the violation of or conspiring to violate any
10 provision of this chapter.
11 (t) Knowingly making any false or fraudulent statement, written or
12 oral, in connection with the practice of medicine or if applying for
13 privileges or renewing an application for privileges at a health care
14 institution.
15 (u) Charging a fee for services not rendered or dividing a
16 professional fee for patient referrals among health care providers or health
17 care institutions or between these providers and institutions or a
18 contractual arrangement that has the same effect.
19 (v) Obtaining a fee by fraud, deceit or misrepresentation.
20 (w) Charging or collecting a clearly excessive fee. In determining
21 if a fee is clearly excessive, the board shall consider the fee or range of
22 fees customarily charged in the state for similar services in light of
23 modifying factors such as the time required, the complexity of the service
24 and the skill requisite to perform the service properly. This subdivision
25 does not apply if there is a clear written contract for a fixed fee between
26 the physician and the patient that has been entered into before the provision
27 of service.
28 (x) Fetal experiments conducted in violation of section 36-2302.
29 (y) The use of experimental forms of diagnosis and treatment without
30 adequate informed patient consent, and without conforming to generally
31 accepted experimental criteria, including protocols, detailed records,
32 periodic analysis of results and periodic review by a medical peer review
33 committee as approved by the federal food and drug administration or its
34 successor agency.
35 (z) Engaging in sexual conduct with a current patient or with a former
36 patient within six months after the last medical consultation unless the
37 patient was the licensee's spouse at the time of the contact or, immediately
38 preceding the physician-patient relationship, was in a dating or engagement
39 relationship with the licensee. For the purposes of this subdivision,
40 "sexual conduct" includes:
41 (i) Engaging in or soliciting sexual relationships, whether consensual
42 or nonconsensual.
43 (ii) Making sexual advances, requesting sexual favors or engaging in
44 any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(aa) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(bb) Representing or holding oneself out as being a medical specialist when such is not the fact.

(cc) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(dd) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ee) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(ff) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in ~~non-routine~~ NONROUTINE goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(gg) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the federal food and drug administration or its successor agency.

(hh) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(ii) Lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(jj) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(kk) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

1 (ll) Conduct that the board determines is gross negligence, repeated
2 negligence or negligence resulting in harm to or the death of a patient.
3 (mm) The representation by a doctor of medicine or the doctor's staff,
4 employer or representative that the doctor is boarded or board certified if
5 this is not true or the standing is not current or without supplying the full
6 name of the specific agency, organization or entity granting this standing.
7 (nn) Refusing to submit to a body fluid examination as required by the
8 board pursuant to section 32-1452 or pursuant to a board investigation into
9 a doctor of medicine's alleged substance abuse.
10 (oo) Failing to report in writing to the ARIZONA MEDICAL board or the
11 ARIZONA regulatory board of physician assistants any evidence that a doctor
12 of medicine or a physician assistant is or may be medically incompetent,
13 guilty of unprofessional conduct or mentally or physically unable to safely
14 practice medicine or TO PERFORM as a physician assistant.
15 (pp) The failure of a physician who is the chief executive officer,
16 the medical director or the medical chief of staff of a health care
17 institution to report in writing to the board that the hospital privileges
18 of a doctor of medicine have been denied, revoked, suspended, supervised or
19 limited because of actions by the doctor that appear to show that the doctor
20 is or may be medically incompetent, is or may be guilty of unprofessional
21 conduct or is or may be unable to engage safely in the practice of medicine.
22 (qq) Representing oneself to be a current member of the board, its
23 staff or a board medical consultant if this is not true.
24 (rr) Failing to make patient medical records in the physician's
25 possession promptly available to a physician assistant, a nurse practitioner,
26 a person licensed pursuant to this chapter or a podiatrist, chiropractor,
27 naturopathic physician, osteopathic physician or homeopathic physician
28 licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper
29 authorization to do so from the patient, a minor patient's parent, the
30 patient's legal guardian or the patient's authorized representative or
31 failing to comply with title 12, chapter 13, article 7.1.
32 (ss) Prescribing, dispensing or furnishing a prescription medication
33 or a prescription-only device as defined in section 32-1901 to a person
34 unless the licensee first conducts a physical examination of that person or
35 has previously established a doctor-patient relationship. This subdivision
36 does not apply to:
37 (i) A physician who provides temporary patient supervision on behalf
38 of the patient's regular treating licensed health care professional.
39 (ii) Emergency medical situations as defined in section 41-1831.
40 (iii) Prescriptions written to prepare a patient for a medical
41 examination.
42 (iv) PRESCRIPTIONS WRITTEN OR PRESCRIPTION MEDICATIONS ISSUED FOR USE
43 BY A COUNTY OR TRIBAL PUBLIC HEALTH DEPARTMENT FOR IMMUNIZATION PROGRAMS,
44 EMERGENCY TREATMENT, IN RESPONSE TO AN INFECTIOUS DISEASE INVESTIGATION,
45 PUBLIC HEALTH EMERGENCY, INFECTIOUS DISEASE OUTBREAK OR ACT OF BIOTERRORISM.

FOR THE PURPOSES OF THIS ITEM, "BIOTERRORISM" HAS THE SAME MEANING AS PRESCRIBED IN SECTION 36-781.

Sec. 2. Section 32-1403.01, Arizona Revised Statutes, is amended to read:

32-1403.01. Licensees; profiles; required information; review; malpractice information; civil penalty

A. ~~Beginning on January 1, 2001,~~ The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet web site and, if requested, in writing. The profile shall contain the following information:

1. A description of any ~~criminal~~ conviction OF A FELONY OR A MISDEMEANOR INVOLVING MORAL TURPITUDE within the last five years. For purposes of this paragraph, a licensee is deemed to be convicted ~~of a crime~~ if the licensee pled guilty or was found guilty by a court of competent jurisdiction.

2. A description of any FELONY charges OR MISDEMEANOR CHARGES INVOLVING MORAL TURPITUDE within the last five years to which the licensee pled no contest.

3. The number of pending complaints and final board disciplinary and nondisciplinary actions, including dismissals, within the last five years. Information concerning pending complaints shall contain the following statement:

> Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit and are dismissed.

4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall also contain the following statement:

> The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action does not create a presumption that medical malpractice occurred.

5. The name and location of the licensee's medical school and the date of graduation.

6. The name and location of the institution from which the licensee received graduate medical education and the date that education was completed.

7. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required

pursuant to subsection A, paragraphs 1, 2 and 4. The board shall update immediately its internet web site to reflect changes in information relating to subsection A, paragraphs 1 through 4. The board shall update the internet web site information at least annually.

C. The board shall provide each licensee with a copy of the licensee's profile and give the licensee reasonable time to correct the profile before it is available to the public.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

Sec. 3. Section 32-1451, Arizona Revised Statutes, is amended to read:

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

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

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the

medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

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

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

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

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

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

~~3. Enter into an agreement with the physician to limit the physician's practice or professional activities if the physician is mentally or physically unable to engage safely in all aspects of medicine.~~

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview it may enter into a consent agreement with the doctor to limit or restrict the doctor's

practice or to rehabilitate the doctor~~,~~ IN ORDER TO protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program AT THE DOCTOR'S OWN EXPENSE.

G. The board shall not disclose the name of the person who provided information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

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

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

1. Dismiss if, in the opinion of the board, the complaint is without merit.

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

3. ENTER INTO AN AGREEMENT WITH THE DOCTOR TO RESTRICT OR LIMIT THE DOCTOR'S PRACTICE OR PROFESSIONAL ACTIVITIES OR TO REHABILITATE, RETRAIN OR ASSESS THE DOCTOR IN ORDER TO PROTECT THE PUBLIC AND ENSURE THE DOCTOR'S ABILITY TO SAFELY ENGAGE IN THE PRACTICE OF MEDICINE. THE BOARD MAY ALSO REQUIRE THE DOCTOR TO SUCCESSFULLY COMPLETE A BOARD APPROVED REHABILITATIVE, RETRAINING OR ASSESSMENT PROGRAM AT THE DOCTOR'S OWN EXPENSE PURSUANT TO SUBSECTION F OF THIS SECTION.

~~3.~~ 4. File a letter of reprimand.

~~4.~~ 5. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

~~5.~~ 6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply

with the terms of probation the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.

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

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

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

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

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

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

1 P. The board may divide into review committees of not less than three
2 members including a public member. The committees shall review complaints
3 not dismissed by the executive director and may take the following actions:
4 1. Dismiss the complaint if a committee determines that the complaint
5 is without merit.
6 2. Issue an advisory letter. The licensee may file a written
7 response with the board within thirty days after the licensee receives the
8 advisory letter.
9 3. Conduct a formal interview pursuant to subsection H of this
10 section. This includes initiating formal proceedings pursuant to
11 subsection J of this section and imposing civil penalties pursuant to
12 subsection K of this section.
13 4. Refer the matter for further review by the full board.
14 Q. Pursuant to sections 35-146 and 35-147, the board shall deposit
15 all monies collected from civil penalties paid pursuant to this chapter in
16 the state general fund.
17 R. Notice of a complaint and hearing is effective by a true copy of
18 it being sent by certified mail to the doctor's last known address of record
19 in the board's files. Notice of the complaint and hearing is complete on the
20 date of its deposit in the mail. The board shall begin a formal hearing
21 within one hundred twenty days of that date.
22 S. A physician who submits an independent medical examination pursuant
23 to an order by a court is not subject to a complaint for unprofessional
24 conduct unless a complaint is made or referred by a court to the board. For
25 purposes of this subsection, "independent medical examination" means a
26 professional analysis of medical status based on a person's past and present
27 physical and psychiatric history and conducted by a licensee or group of
28 licensees on a contract basis for a court.
29 T. The board may accept the surrender of an active license from a
30 person who admits in writing to any of the following:
31 1. Being unable to safely engage in the practice of medicine.
32 2. Having committed an act of unprofessional conduct.
33 3. Having violated this chapter or a board rule.
34 U. In determining the appropriate disciplinary action under this
35 section, the board shall consider all previous nondisciplinary and
36 disciplinary actions against a licensee.
37 Sec. 4. Section 32-1452, Arizona Revised Statutes, is amended to read:
38 32-1452. <u>Substance abuse treatment and rehabilitation program;</u>
39 <u>private contract; funding</u>
40 A. The board may establish a confidential program for the treatment
41 and rehabilitation of doctors of medicine and physician assistants who are
42 impaired by alcohol or drug abuse. This program shall include education,
43 intervention, therapeutic treatment and posttreatment monitoring and support.

1 B. The board may contract with other organizations to operate the
2 program established pursuant to subsection A of this section. A contract
3 with a private organization shall include the following requirements:
4 1. Periodic reports to the board regarding treatment program activity.
5 2. Release to the board on demand of all treatment records.
6 3. Quarterly reports to the board regarding each doctor's diagnosis
7 and prognosis and the recommendations for continuing care, treatment and
8 supervision.
9 4. Immediate reporting to the board of the name of an impaired doctor
10 who the treating organization believes to be misusing chemical substances.
11 5. Reports to the board, as soon as possible, of the name of a doctor
12 who refuses to submit to treatment or whose impairment is not substantially
13 alleviated through treatment.
14 C. The board may allocate an amount of not to exceed forty dollars
15 from each fee it collects from the biennial renewal of active licenses
16 pursuant to section 32-1436 for the operation of the program established by
17 this section.
18 D. A doctor of medicine who is impaired by alcohol or drug abuse shall
19 agree to enter into a stipulation order with the board or the doctor shall
20 be placed on probation or shall be subject to other action as provided by
21 law.
22 E. In order to determine that a doctor of medicine who has been placed
23 on probationary order or who has entered into a stipulation order pursuant
24 to this section is not impaired by drugs or alcohol after that order is no
25 longer in effect, the board or its designee may require the doctor of
26 medicine to submit to body fluid examinations at any time within five
27 consecutive years following termination of the probationary or stipulated
28 order.
29 F. A doctor of medicine who is impaired by alcohol or drug abuse and
30 who was under a board stipulation or probationary order that is no longer in
31 effect shall request the board to place the doctor's license on inactive
32 status with cause. If the doctor fails to do this the board shall summarily
33 suspend the license pursuant to section 32-1451, subsection D. In order to
34 reactivate the license the doctor shall successfully complete a long-term
35 care residential or inpatient hospital treatment program, or both, and shall
36 meet the applicable requirements of section 32-1431, subsection D. After the
37 doctor completes treatment the board shall determine if it should refer the
38 matter for a formal hearing for the purpose of suspending or revoking the
39 license or to place the doctor on probation for a minimum of five years with
40 restrictions necessary to assure the public's safety.
41 G. The board shall revoke the license of a doctor of medicine if that
42 doctor is impaired by alcohol or drug abuse and was previously placed on
43 probation pursuant to subsection F of this section and the probation is no
44 longer in effect. The board may accept the surrender of the license if the
45 doctor admits in writing to being impaired by alcohol or drug abuse.

H. An evaluator, teacher, ~~or~~ supervisor OR VOLUNTEER in ~~a board approved rehabilitative, retraining or assessment~~ THE BOARD'S SUBSTANCE ABUSE TREATMENT AND REHABILITATION program who acts in good faith within the scope of that program ~~or a volunteer who assists in the board's substance abuse treatment and rehabilitation program~~ is not subject to civil liability, including malpractice liability, for the actions of a doctor who is attending ~~either of these programs~~ THE PROGRAM pursuant to board action.

APPROVED BY THE GOVERNOR APRIL, 14, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2003.

Passed the House February 24, 2003

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 8, 2003

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of April, 2003

at 2:30 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 14 day of

April, 2003,

at 9:00 o'clock A. M.

Jt Napolitano
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of April, 2003

at 10:55 o'clock A M.

Janice K. Brewer
Secretary of State

H.B. 2207