

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
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CHAPTER 291

HOUSE BILL 2780

AN ACT

AMENDING SECTIONS 32-3253, 32-3281, 32-3282 AND 32-3283, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF BEHAVIORAL HEALTH EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-3253, Arizona Revised Statutes, is amended to
3 read:

4 32-3253. Powers and duties

5 A. The board shall:

6 1. Adopt rules consistent with and necessary or proper to carry out
7 the purposes of this chapter.

8 2. Administer and enforce this chapter, rules adopted pursuant to this
9 chapter and orders of the board.

10 3. Issue a license by examination, reciprocity or temporary
11 recognition to, and renew the license of, each person who is qualified to be
12 licensed pursuant to this chapter. THE BOARD MUST ISSUE OR DENY A LICENSE
13 WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE APPLICANT SUBMITS A COMPLETED
14 APPLICATION.

15 4. Establish a licensure fee schedule annually, by a formal vote at a
16 regular board meeting.

17 5. Collect fees and spend monies.

18 6. Keep a record of all persons licensed pursuant to this chapter,
19 actions taken on all applications for licensure, actions involving renewal,
20 suspension, revocation or denial of a license or probation of licensees and
21 the receipt and disbursal of monies.

22 7. Adopt an official seal for attestation of licensure and other
23 official papers and documents.

24 8. Employ temporary or permanent personnel as it deems necessary.

25 9. Conduct investigations and determine on its own motion if a
26 licensee or an applicant has engaged in unprofessional conduct, is
27 incompetent or is mentally or physically unable to engage in the practice of
28 behavioral health.

29 10. Conduct disciplinary actions pursuant to this chapter and board
30 rules.

31 11. Establish and enforce standards or criteria of programs or other
32 mechanisms to ensure the continuing competence of licensees.

33 12. Establish and enforce compliance with professional standards and
34 rules of conduct for licensees.

35 13. Engage in a full exchange of information with the licensing and
36 disciplinary boards and professional associations for behavioral health
37 professionals in this state and other jurisdictions.

38 B. The board may join professional organizations and associations
39 organized exclusively to promote the improvement of the standards of the
40 practice of behavioral health, protect the health and welfare of the public
41 or assist and facilitate the work of the board.

42 Sec. 2. Section 32-3281, Arizona Revised Statutes, is amended to read:

43 32-3281. Disciplinary action; hearings; civil penalty

44 A. A credentialing committee, on its own motion or on a complaint, may
45 investigate any evidence that appears to show that a licensee is or may be

1 incompetent, is or may be guilty of unprofessional conduct or is or may be
2 mentally or physically unable to safely engage in the practice of behavioral
3 health. As part of its investigation, a credentialing committee may hold an
4 investigational meeting pursuant to this chapter. Any person may, and a
5 licensee and any entity licensed by the office of behavioral health licensure
6 shall, report to the board any information that would cause a reasonable
7 licensee to believe that another licensee is guilty of unprofessional conduct
8 or is physically or mentally unable to provide behavioral health services
9 competently or safely. Any person or entity that reports or provides
10 information to the board in good faith is not subject to an action for civil
11 damages. It is an act of unprofessional conduct for any licensee to fail to
12 report as required by this section. The board shall report to the office of
13 behavioral health licensure in the department of health services any entity
14 licensed by the office of behavioral health licensure that fails to report as
15 required by this section.

16 B. A credentialing committee shall require any combination of mental,
17 physical or oral or written competency examinations, at the licensee's own
18 expense, and conduct necessary investigations, including investigational
19 interviews between representatives of the board and the licensee, to fully
20 inform itself with respect to any information filed with the board under
21 subsection A of this section. These examinations may include biological
22 fluid testing. The credentialing committee may require the licensee, at the
23 licensee's expense, to undergo assessment by a rehabilitative, retraining or
24 assessment program approved by the credentialing committee.

25 C. If the board finds, based on the information received pursuant to
26 subsection A or B of this section, that the public health, safety or welfare
27 imperatively requires emergency action, and incorporates a finding to that
28 effect in its order, the board may restrict, limit or order a summary
29 suspension of a license pending proceedings for revocation or other action.
30 If the board takes action pursuant to this subsection, it must also serve the
31 licensee with a written notice that states the charges and that the licensee
32 is entitled to a formal hearing before the board or an administrative law
33 judge within sixty days.

34 D. If after completing an investigational meeting the credentialing
35 committee finds that the information provided is not of sufficient
36 seriousness to merit disciplinary action against the licensee, the
37 credentialing committee shall recommend EITHER:

38 1. DISMISS THE COMPLAINT IF, IN THE OPINION OF THE CREDENTIALING
39 COMMITTEE, THE COMPLAINT IS WITHOUT MERIT.

40 2. RECOMMEND either of the following actions to the board:

41 ~~1-~~ (a) Dismiss if, in the opinion of the credentialing committee, the
42 complaint is without merit.

43 ~~2-~~ (b) File a letter of concern and dismiss the complaint.

44 E. A COMPLAINT DISMISSED BY THE CREDENTIALING COMMITTEE PURSUANT TO
45 SUBSECTION D, PARAGRAPH 1 OF THIS SECTION IS NOT A COMPLAINT OF

1 UNPROFESSIONAL CONDUCT AND SHALL NOT BE DISCLOSED BY THE BOARD AS A COMPLAINT
2 ON THE LICENSEE'S COMPLAINT HISTORY.

3 ~~E~~ F. If after completing its investigation the credentialing
4 committee believes that the information is or may be true, the credentialing
5 committee ~~can~~ MAY recommend that the board enter into a consent agreement
6 with the licensee to limit or restrict the licensee's practice or to
7 rehabilitate the licensee, protect the public and ensure the licensee's
8 ability to safely engage in the practice of behavioral health. A consent
9 agreement may also require the licensee to successfully complete a board
10 approved rehabilitative, retraining or assessment program.

11 ~~F~~ G. If on receipt of a credentialing committee's recommendation the
12 board finds that the information provided pursuant to subsection A of this
13 section is not of sufficient seriousness to merit direct action against the
14 licensee, the board may take either of the following actions:

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

17 2. File a letter of concern and dismiss the complaint. The licensee
18 may file a written response with the board within thirty days after the
19 licensee receives the letter of concern.

20 ~~G~~ H. If on receipt of a credentialing committee's recommendation the
21 board finds that the information provided pursuant to subsection A of this
22 section is or may be true, the board may enter into an agreement with the
23 licensee to limit or restrict the licensee's practice or to rehabilitate the
24 licensee, protect the public and ensure the licensee's ability to safely
25 engage in the practice of behavioral health. The board may also require the
26 licensee to successfully complete a board approved rehabilitative, retraining
27 or assessment program.

28 ~~H~~ I. If on receipt of a credentialing committee's recommendation the
29 board finds that the information provided pursuant to subsection A of this
30 section is or may be true, the board may request a formal interview with the
31 licensee. If the licensee refuses the invitation for a formal interview or
32 accepts and the results indicate that grounds may exist for revocation or
33 suspension of the licensee's license for more than twelve months, the board
34 shall issue a formal complaint and order that a hearing be held pursuant to
35 title 41, chapter 6, article 10. If after completing a formal interview the
36 board finds that the protection of the public requires emergency action, the
37 board may order a summary suspension of the licensee's license pending formal
38 revocation proceedings or other action authorized by this section.

39 ~~I~~ J. If after completing the formal interview the board finds the
40 information provided is not of sufficient seriousness to merit suspension for
41 more than twelve months or revocation of the license, the board may take the
42 following actions:

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

1 2. File a letter of concern and dismiss the complaint. The licensee
2 may file a written response with the board within thirty days after the
3 licensee receives the letter of concern.

4 3. Issue a decree of censure. A decree of censure is an official
5 action against the licensee's license and may include a requirement for
6 restitution of fees to a client resulting from violations of this chapter or
7 rules adopted pursuant to this chapter.

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

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

24 ~~K~~ L. In a formal interview pursuant to subsection ~~H~~ I of this
25 section or in a hearing pursuant to subsection ~~J~~ K of this section, the
26 board in addition to any other action may impose a civil penalty not to
27 exceed one thousand dollars for each violation of this chapter or a rule
28 adopted under this chapter.

29 ~~L~~ M. A letter of concern is a public document.

30 ~~M~~ N. A licensee who after a formal hearing is found by the board to
31 be guilty of unprofessional conduct, to be mentally or physically unable to
32 safely engage in the practice of behavioral health or to be professionally
33 incompetent is subject to censure, probation as provided in this section,
34 suspension of license or revocation of license or any combination of these,
35 including a stay of action, and for a period of time or permanently and under
36 conditions as the board deems appropriate for the protection of the public
37 health and safety and just in the circumstance. The board may charge all
38 costs incurred in the course of the investigation and formal hearing to the
39 licensee it finds is in violation of this chapter. The board shall deposit,
40 pursuant to sections 35-146 and 35-147, monies collected pursuant to this
41 subsection in the board of behavioral health examiners fund established by
42 section 32-3254.

43 ~~N~~ O. If the board during the course of any investigation determines
44 that a criminal violation may have occurred involving the delivery of

1 behavioral health services, the board shall make the evidence of violations
2 available to the appropriate criminal justice agency for its consideration.
3 ~~Q.~~ P. The board shall deposit, pursuant to sections 35-146 and
4 35-147, all monies collected from civil penalties paid pursuant to this
5 chapter in the state general fund.
6 ~~P.~~ Q. Notice of a complaint and hearing is effective by a true copy
7 of the notice being sent by certified mail to the licensee's last known
8 address of record in the board's files. Notice of the complaint and hearing
9 is complete on the date of its deposit in the mail.
10 ~~Q.~~ R. In determining the appropriate disciplinary action under this
11 section, the board shall consider all previous nondisciplinary and
12 disciplinary actions against a licensee.
13 ~~R.~~ S. The board may defer action with regard to an impaired licensee
14 who voluntarily signs an agreement, in a form satisfactory to the board,
15 agreeing to practice restrictions and treatment and monitoring programs
16 deemed necessary by the board to protect the public health and safety. A
17 licensee who is impaired and who does not agree to enter into an agreement
18 with the board is subject to other action as provided pursuant to this
19 chapter.
20 ~~S.~~ T. Subject to an order duly entered by the board, a person whose
21 license to practice behavioral health has been suspended or restricted
22 pursuant to this chapter, whether voluntarily or by action of the board, may
23 at reasonable intervals apply to the board for reinstatement of the license.
24 The person shall submit the application in writing and in the form prescribed
25 by the board. After conducting an investigation and hearing, the board may
26 grant or deny the application or modify the original finding to reflect any
27 circumstances that have changed sufficiently to warrant modification. The
28 board may require the applicant to pass an examination, ~~OR~~ complete board
29 imposed continuing education requirements or MAY IMPOSE any other sanctions
30 the board deems appropriate for reentry into the practice of behavioral
31 health.
32 ~~T.~~ U. A person whose license is revoked, suspended or not renewed
33 must return the license to the offices of the board within ten days after
34 notice of that action.
35 ~~U.~~ V. The board may enforce a civil penalty imposed pursuant to this
36 section in the superior court in Maricopa county.
37 W. FOR COMPLAINTS BEING BROUGHT BEFORE A CREDENTIALING COMMITTEE OR
38 THE FULL BOARD, THE INFORMATION RELEASED TO THE PUBLIC REGARDING AN ONGOING
39 INVESTIGATION MUST CLEARLY INDICATE THAT THE INVESTIGATION IS A PENDING
40 COMPLAINT AND MUST INCLUDE THE FOLLOWING STATEMENT:
41 PENDING COMPLAINTS REPRESENT UNPROVEN ALLEGATIONS. ON
42 INVESTIGATION, MANY COMPLAINTS ARE FOUND TO BE WITHOUT MERIT OR
43 NOT OF SUFFICIENT SERIOUSNESS TO MERIT DISCIPLINARY ACTION
44 AGAINST THE LICENSEE AND ARE DISMISSED.

1 Sec. 3. Section 32-3282, Arizona Revised Statutes, is amended to read:
2 32-3282. Right to examine and copy evidence; summoning
3 witnesses and documents; taking testimony; right to
4 counsel

5 A. In connection with information received pursuant to section
6 32-3281, subsection A, the board or a credentialing committee or the board's
7 or committee's authorized agents or employees at all reasonable times shall
8 have access to, for the purpose of examination, and the right to copy any
9 psychotherapy notes, documents, reports, records or other physical evidence
10 of any person being investigated, or the reports, records and any other
11 documents maintained by and in possession of any hospital, clinic,
12 physician's office, laboratory, pharmacy or health care institution as
13 defined in section 36-401 or any other public or private agency, if the
14 psychotherapy notes, documents, reports, records or evidence relate to the
15 ~~unauthorized practice of behavioral health or to the competence,~~
16 ~~unprofessional conduct or mental or physical ability of a licensee to safely~~
17 ~~practice~~ SPECIFIC COMPLAINT.

18 B. For the purpose of all investigations and proceedings conducted by
19 a credentialing committee:

20 1. The board or a credentialing committee on its own initiative may
21 issue subpoenas compelling the attendance and testimony of witnesses or
22 demanding the production for examination or copying of documents or any other
23 physical evidence if the evidence relates to the unauthorized practice of
24 behavioral health or to the competence, unprofessional conduct or mental or
25 physical ability of a licensee to safely practice. Within five days after
26 the service of a subpoena on any person requiring the production of any
27 evidence in that person's possession or under that person's control, the
28 person may petition the board or the credentialing committee to revoke, limit
29 or modify the subpoena. The board or the credentialing committee shall
30 revoke, limit or modify a subpoena if in its opinion the evidence required
31 does not relate to unlawful practices covered by this chapter or is not
32 relevant to the charge that is the subject matter of the hearing or
33 investigation or the subpoena does not describe with sufficient particularity
34 the physical evidence required to be produced. Any member of the board or a
35 credentialing committee and any agent designated by the board may administer
36 oaths, examine witnesses and receive evidence.

37 2. Any person appearing before the board or a credentialing committee
38 may be represented by counsel.

39 3. The superior court, on application by the board or a credentialing
40 committee or by the person subpoenaed, has jurisdiction to issue an order
41 either:

42 (a) Requiring the person to appear before the board or a credentialing
43 committee or the authorized agent to produce evidence relating to the matter
44 under investigation.

1 (b) Revoking, limiting or modifying the subpoena if in the court's
2 opinion the evidence demanded does not relate to unlawful practices covered
3 by this chapter or is not relevant to grounds for disciplinary action that
4 are the subject matter of the hearing or investigation or the subpoena does
5 not describe with sufficient particularity the physical evidence required to
6 be produced. Any failure to obey an order of the court may be punished by
7 the court as contempt.

8 C. Records, including clinical records, reports, files or other
9 reports or oral statements relating to examinations, findings or treatments
10 of clients, any information from which a client or the client's family might
11 be identified or information received and records kept by the board or a
12 credentialing committee as a result of the investigation procedure prescribed
13 by this chapter are not available to the public.

14 D. This section and any other law that makes communications between a
15 licensee and the licensee's client a privileged communication does DO not
16 apply to investigations or proceedings conducted pursuant to this chapter.
17 The board and a credentialing committee and the board's and committee's
18 employees, agents and representatives shall keep in confidence the names of
19 any clients whose records are reviewed during the course of investigations
20 and proceedings pursuant to this chapter.

21 Sec. 4. Section 32-3283, Arizona Revised Statutes, is amended to read:

22 32-3283. Confidential relationship; privileged communications;
23 clients with legal guardians; treatment decisions

24 ~~A. In any legal action a licensee shall not, without the consent of~~
25 ~~the licensee's client, be examined as to any communication made by the client~~
26 ~~to the licensee or as to any such knowledge obtained with respect to~~
27 ~~personnel dealing with the client. Unless the client has waived the~~
28 ~~behavioral health professional client privilege in writing or in court~~
29 ~~testimony, a licensee is not required to divulge, and shall not voluntarily~~
30 ~~divulge, information that the licensee received by reason of the confidential~~
31 ~~nature of the licensee's practice as a behavioral health professional except~~
32 ~~that the licensee shall divulge to the board any information it subpoenas in~~
33 ~~connection with an investigation, public hearing or other proceeding. The~~
34 ~~behavioral health professional client privilege does not extend to cases in~~
35 ~~which the licensee has a:~~

36 ~~1. Duty to report nonaccidental injuries and physical neglect of~~
37 ~~minors as required by section 13-3620.~~

38 ~~2. Duty to report unprofessional conduct by another licensee pursuant~~
39 ~~to this chapter.~~

40 ~~3. Duty to inform victims and appropriate authorities that a client's~~
41 ~~condition indicates a clear and imminent danger to the client or others~~
42 ~~pursuant to this chapter.~~

1 A. THE CONFIDENTIAL RELATIONSHIP BETWEEN A CLIENT AND A LICENSEE,
2 INCLUDING A TEMPORARY LICENSEE, IS THE SAME AS BETWEEN AN ATTORNEY AND A
3 CLIENT. UNLESS A CLIENT WAIVES THIS PRIVILEGE IN WRITING OR IN COURT
4 TESTIMONY, A LICENSEE SHALL NOT VOLUNTARILY OR INVOLUNTARILY DIVULGE
5 INFORMATION THAT IS RECEIVED BY REASON OF THE CONFIDENTIAL NATURE OF THE
6 BEHAVIORAL HEALTH PROFESSIONAL-CLIENT RELATIONSHIP.

7 B. A LICENSEE SHALL DIVULGE TO THE BOARD INFORMATION THE BOARD
8 REQUIRES IN CONNECTION WITH ANY INVESTIGATION, PUBLIC HEARING OR OTHER
9 PROCEEDING.

10 C. THE BEHAVIORAL HEALTH PROFESSIONAL-CLIENT PRIVILEGE DOES NOT EXTEND
11 TO CASES IN WHICH THE BEHAVIORAL HEALTH PROFESSIONAL HAS A DUTY TO:

12 1. INFORM VICTIMS AND APPROPRIATE AUTHORITIES THAT A CLIENT'S
13 CONDITION INDICATES A CLEAR AND IMMINENT DANGER TO THE CLIENT OR OTHERS
14 PURSUANT TO THIS CHAPTER.

15 2. REPORT INFORMATION AS REQUIRED BY LAW.

16 B- D. A client's legal guardian may make treatment decisions on
17 behalf of the client, except that the client receiving services is the
18 decision maker for issues:

19 1. That directly affect the client's physical or emotional safety,
20 such as sexual or other exploitative relationships.

21 2. That the guardian agrees to specifically reserve to the client.

22 3. Where the right to seek behavioral health services without parental
23 or guardian consent is established by state or federal law.

24 Sec. 5. Reciprocity

25 For the purposes of determining if an applicant meets the reciprocity
26 requirements of section 32-3274, Arizona Revised Statutes, and rules adopted
27 by the board of behavioral health examiners relating to reciprocity, the
28 board must consider the applicant's educational, supervised work experience
29 and clinical supervision equivalencies.

30 Sec. 6. Board of behavioral health examiners; committee; social
31 workers' qualifications; recommendations

32 A. The board of behavioral health examiners shall establish a
33 committee consisting of three members of the social work credentialing
34 committee and two licensed social workers to recommend to the board the
35 specific experience that is necessary to satisfy the requirements of section
36 32-3293, paragraph 1, subdivision (b), Arizona Revised Statutes, as it
37 relates to licensed clinical social workers, including school social workers
38 and social workers who work in hospitals. The committee shall submit its
39 recommendations to the board on or before March 31, 2007.

40 B. The board shall make a copy of the committee's recommendations
41 available to the public on request and shall post a copy of the report on the
42 board's web site.

APPROVED BY THE GOVERNOR MAY 19, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2006.