Senate Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
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Second Regular Session
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CHAPTER 78

SENATE BILL 1084

AN ACT

CHANGING THE DESIGNATION OF TITLE 32, CHAPTER 13, ARTICLE 1, ARIZONA REVISED STATUTES, TO "ARIZONA MEDICAL BOARD"; AMENDING SECTIONS 32-1401, 32-1405 AND 32-1451, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA MEDICAL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Heading change

The article heading of title 32, chapter 13, article 1, Arizona Revised Statutes, is changed from "BOARD OF MEDICAL EXAMINERS" to "ARIZONA MEDICAL BOARD".

Sec. 2. Section 32-1401, Arizona Revised Statutes, is amended to read:

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:

(a) While there is insufficient evidence to support disciplinary action the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any 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.

5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.

6. "Board" means the Arizona medical board.

7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified 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 taking 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.

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.

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.

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.

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

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine licensed pursuant to this chapter.

22. "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.

23. "Restrict" means taking 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.

24. "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.

25. "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.

1 26. "Teaching license" means a valid license to practice medicine as a
2 full-time faculty member of an approved school of medicine or a teaching
3 hospital's accredited graduate medical education program.
4 27. "Unprofessional conduct" includes the following, whether occurring
5 in this state or elsewhere:
6 (a) Violating any federal or state laws, rules or regulations
7 applicable to the practice of medicine.
8 (b) Intentionally disclosing a professional secret or intentionally
9 disclosing a privileged communication except as either act may otherwise be
10 required by law.
11 (c) False, fraudulent, deceptive or misleading advertising by a doctor
12 of medicine or the doctor's staff, employer or representative.
13 (d) Committing a felony, whether or not involving moral turpitude, or
14 a misdemeanor involving moral turpitude. In either case, conviction by any
15 court of competent jurisdiction or a plea of no contest is conclusive
16 evidence of the commission.
17 (e) Failing or refusing to maintain adequate records on a patient.
18 (f) Habitual intemperance in the use of alcohol or habitual substance
19 abuse.
20 (g) Using controlled substances except if prescribed by another
21 physician for use during a prescribed course of treatment.
22 (h) Prescribing or dispensing controlled substances to members of the
23 physician's immediate family.
24 (i) Prescribing, dispensing or administering schedule II controlled
25 substances as defined in section 36-2513 including amphetamines and similar
26 schedule II sympathomimetic drugs in the treatment of exogenous obesity for a
27 period in excess of thirty days in any one year, or the non-therapeutic use
28 of injectable amphetamines.
29 (j) Prescribing, dispensing or administering any controlled substance
30 or prescription-only drug for other than accepted therapeutic purposes.
31 (k) Signing a blank, undated or predated prescription form.
32 (l) Conduct that the board determines is gross malpractice, repeated
33 malpractice or any malpractice resulting in the death of a patient.
34 (m) Representing that a manifestly incurable disease or infirmity can
35 be permanently cured, or that any disease, ailment or infirmity can be cured
36 by a secret method, procedure, treatment, medicine or device, if such is not
37 the fact.
38 (n) Refusing to divulge to the board on demand the means, method,
39 procedure, modality of treatment or medicine used in the treatment of a
40 disease, injury, ailment or infirmity.
41 (o) Action that is taken against a doctor of medicine by another
42 licensing or regulatory jurisdiction due to that doctor's mental or physical
43 inability to engage safely in the practice of medicine, the doctor's medical
44 incompetence or for unprofessional conduct as defined by that jurisdiction
45 and that corresponds directly or indirectly to an act of unprofessional

1 conduct prescribed by this paragraph. The action taken may include refusing,
2 denying, revoking or suspending a license by that jurisdiction or a
3 surrendering of a license to that jurisdiction, otherwise limiting,
4 restricting or monitoring a licensee by that jurisdiction or placing a
5 licensee on probation by that jurisdiction.
6 (p) Sanctions imposed by an agency of the federal government,
7 including restricting, suspending, limiting or removing a person from the
8 practice of medicine or restricting that person's ability to obtain financial
9 remuneration.
10 (q) Any conduct or practice that is or might be harmful or dangerous
11 to the health of the patient or the public.
12 (r) Violating a formal order, probation, consent agreement or
13 stipulation issued or entered into by the board or its executive director
14 under this chapter.
15 (s) Violating or attempting to violate, directly or indirectly, or
16 assisting in or abetting the violation of or conspiring to violate any
17 provision of this chapter.
18 (t) Knowingly making any false or fraudulent statement, written or
19 oral, in connection with the practice of medicine or if applying for
20 privileges or renewing an application for privileges at a health care
21 institution.
22 (u) Charging a fee for services not rendered or dividing a
23 professional fee for patient referrals among health care providers or health
24 care institutions or between these providers and institutions or a
25 contractual arrangement that has the same effect. This subdivision does not
26 apply to payments from a medical researcher to a physician in connection with
27 identifying and monitoring patients for a clinical trial regulated by the
28 United States food and drug administration.
29 (v) Obtaining a fee by fraud, deceit or misrepresentation.
30 (w) Charging or collecting a clearly excessive fee. In determining if
31 a fee is clearly excessive, the board shall consider the fee or range of fees
32 customarily charged in the state for similar services in light of modifying
33 factors such as the time required, the complexity of the service and the
34 skill requisite to perform the service properly. This subdivision does not
35 apply if there is a clear written contract for a fixed fee between the
36 physician and the patient that has been entered into before the provision of
37 service.
38 (x) Fetal experiments conducted in violation of section 36-2302.
39 (y) The use of experimental forms of diagnosis and treatment without
40 adequate informed patient consent, and without conforming to generally
41 accepted experimental criteria, including protocols, detailed records,
42 periodic analysis of results and periodic review by a medical peer review
43 committee as approved by the federal food and drug administration or its
44 successor agency.

(z) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in 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 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.

(ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(mm) The representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(nn) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(oo) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(pp) The failure of a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised 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 unable to engage safely in the practice of medicine.

(qq) Representing oneself to be a current member of the board, its staff or a board medical consultant if this is not true.

(rr) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(ss) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or

has previously established a doctor-patient relationship. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(tt) Performing office based surgery using ~~intravenous~~ sedation in violation of board rules.

(uu) Practicing medicine under a false or assumed name in this state.

Sec. 3. Section 32-1405, Arizona Revised Statutes, is amended to read:

32-1405. Executive director; compensation; duties; appeal to the board

A. The board shall appoint an executive director who shall serve at the pleasure of the board. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the medical practice act for consideration by the legislature.

4. Appoint and employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.

10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.

18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.

19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

21. Review all complaints filed pursuant to section 32-1451. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.

22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.

24. If delegated by the board, issue advisory letters.

25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.

27. If delegated by the board, refer cases to the board for a formal interview.

28. Perform all other administrative, licensing or regulatory duties required by the board.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director PURSUANT TO SUBSECTION C, PARAGRAPHS 21 THROUGH 27 OF THIS SECTION OR SECTION 32-1422, SUBSECTION E, may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

Sec. 4. Section 32-1451, Arizona Revised Statutes, is amended to read:

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

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

1 privileges of a doctor to practice in that health care institution are
2 denied, revoked, suspended or limited because of actions by the doctor that
3 appear to show that the doctor is or may be medically incompetent, is or may
4 be guilty of unprofessional conduct or is or may be mentally or physically
5 unable to safely engage in the practice of medicine, along with a general
6 statement of the reasons, including patient chart numbers, that led the
7 health care institution to take the action. The chief executive officer, the
8 medical director or the medical chief of staff of a health care institution
9 shall inform the board if a doctor under investigation resigns or if a doctor
10 resigns in lieu of disciplinary action by the health care institution.
11 Notification shall include a general statement of the reasons for the
12 resignation, including patient chart numbers. The board shall inform all
13 appropriate health care institutions in this state as defined in section
14 36-401 and the Arizona health care cost containment system administration of
15 a resignation, denial, revocation, suspension or limitation, and the general
16 reason for that action, without divulging the name of the reporting health
17 care institution. A person who reports information in good faith pursuant to
18 this subsection is not subject to civil liability.
19 C. The board or, if delegated by the board, the executive director
20 shall require, AT THE DOCTOR'S EXPENSE, any combination of mental, physical
21 or oral or written medical competency examinations and conduct necessary
22 investigations, including investigational interviews between representatives
23 of the board and the doctor to fully inform itself with respect to any
24 information filed with the board under subsection A of this section. These
25 examinations may include biological fluid testing and other examinations
26 known to detect the presence of alcohol or other drugs. The board or, if
27 delegated by the board, the executive director may require the doctor, at the
28 doctor's expense, to undergo assessment by a board approved rehabilitative,
29 retraining or assessment program.
30 D. If the board finds, based on the information it receives under
31 subsections A and B of this section, that the public health, safety or
32 welfare imperatively requires emergency action, and incorporates a finding to
33 that effect in its order, the board may restrict a license or order a summary
34 suspension of a license pending proceedings for revocation or other action.
35 If the board takes action pursuant to this subsection it shall also serve the
36 licensee with a written notice that states the charges and that the licensee
37 is entitled to a formal hearing before the board or an administrative law
38 judge within sixty days.
39 E. If, after completing its investigation, the board finds that the
40 information provided pursuant to subsection A of this section is not of
41 sufficient seriousness to merit disciplinary action against the license of
42 the doctor, the board or a board committee may take any of the following
43 actions:
44 1. Dismiss if, in the opinion of the board, the information is without
45 merit.

2. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING MEDICAL EDUCATION IN AN AREA OR AREAS PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

~~2.~~ 3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

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. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING MEDICAL EDUCATION IN AN AREA OR AREAS PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

~~2.~~ 3. 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.~~ 4. 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

1 require the doctor to successfully complete a board approved rehabilitative,
2 retraining or assessment program at the doctor's own expense pursuant to
3 subsection F of this section.
4 ~~4.~~ 5. File a letter of reprimand.
5 ~~5.~~ 6. Issue a decree of censure. A decree of censure is an official
6 action against the doctor's license and may include a requirement for
7 restitution of fees to a patient resulting from violations of this chapter or
8 rules adopted under this chapter.
9 ~~6.~~ 7. Fix a period and terms of probation best adapted to protect the
10 public health and safety and rehabilitate or educate the doctor concerned.
11 Probation may include temporary suspension for not to exceed twelve months,
12 restriction of the doctor's license to practice medicine, a requirement for
13 restitution of fees to a patient or education or rehabilitation at the
14 licensee's own expense. If a licensee fails to comply with the terms of
15 probation, the board shall serve the licensee with a written notice that
16 states that the licensee is subject to a formal hearing based on the
17 information considered by the board at the formal interview and any other
18 acts or conduct alleged to be in violation of this chapter or rules adopted
19 by the board pursuant to this chapter including noncompliance with the term
20 of probation, a consent agreement or a stipulated agreement. A licensee
21 shall pay the costs associated with probation monitoring each year during
22 which the licensee is on probation. The board may adjust this amount on an
23 annual basis. The board may allow a licensee to make payments on an
24 installment plan if a financial hardship occurs. A licensee who does not pay
25 these costs within thirty days after the due date prescribed by the board
26 violates the terms of probation.
27 J. If the board finds that the information provided in subsection A of
28 this section warrants suspension or revocation of a license issued under this
29 chapter, it shall initiate formal proceedings pursuant to title 41, chapter
30 6, article 10.
31 K. In a formal interview pursuant to subsection H of this section or
32 in a hearing pursuant to subsection J of this section, the board in addition
33 to any other action may impose a civil penalty in the amount of not less than
34 one thousand dollars nor more than ten thousand dollars for each violation of
35 this chapter or a rule adopted under this chapter.
36 L. An advisory letter is a public document.
37 M. Any doctor of medicine who after a formal hearing is found by the
38 board to be guilty of unprofessional conduct, to be mentally or physically
39 unable safely to engage in the practice of medicine or to be medically
40 incompetent is subject to censure, probation as provided in this section,
41 suspension of license or revocation of license or any combination of these,
42 including a stay of action, and for a period of time or permanently and under
43 conditions as the board deems appropriate for the protection of the public
44 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.

P. The board may divide into review committees of not less than three members including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

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

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

3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.

4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

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

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

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

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

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

APPROVED BY THE GOVERNOR APRIL 10, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2006.