Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 65

HOUSE BILL 2115

AN ACT

AMENDING SECTIONS 32-852.01, 32-924, 32-1263.01, 32-1451, 32-1551, 32-1744, 32-1855, 32-2045, 32-2081, 32-2234, 32-2551, 32-2821, 32-2934, 32-3281, 32-3442, 32-3553, 32-3951, 32-4103, 32-4122, 32-4152 AND 32-4254, ARIZONA REVISED STATUTES; RELATING TO HEALTH PROFESSIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-852.01, Arizona Revised Statutes, is amended to read:

32-852.01. Investigations; duty to report; unprofessional conduct hearing; decision of board; appeal

A. The board on its own motion may investigate any evidence ~~which~~ THAT appears to show that a podiatrist is or may be guilty of a violation of section 32-852. Any podiatrist or the Arizona podiatry association shall, or any other person may, report to the board any information the podiatrist, association or person may have ~~which~~ THAT appears to show that a podiatrist is or may be guilty of unprofessional conduct or is or may be guilty of practice without regard for the safety and welfare of the public. Any podiatrist, association, health care institution or other person that reports or provides information to the board in good faith is not subject to civil liability and the name of the reporter shall not be disclosed unless the information is essential to the investigative proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any podiatrist to fail to report as required by this subsection.

B. Based on information received pursuant to subsection A of this section, the board may order a summary suspension of a license pending formal proceedings for license revocation or other disciplinary action if the board finds that the protection of the public health or safety requires emergency action. The board shall 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.

C. If the board finds after completing its investigation that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit direct action against the license of the podiatrist, it may take ~~either~~ ANY of the following actions:

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

2. File a letter of concern.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

D. If the board finds after completing its investigation that the information is or may be true, the board may request an informal interview with the licensee. If the licensee refuses the invitation or accepts the invitation and the results of the interview indicate suspension or revocation of the license might be in order, the board shall issue a complaint and conduct a formal hearing pursuant to title 41, chapter 6, article 10. If the board finds at the informal interview that the information provided under subsection A of this section is true but is not of sufficient seriousness to

merit suspension or revocation of the license, it may take one or more of the following actions:

1. File a letter of concern.

2. Issue a decree of censure.

3. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. If a licensee fails to comply with the terms of probation the board may file a complaint and hold a formal hearing pursuant to this section.

4. Impose a civil penalty of not more than two thousand dollars for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to this paragraph in the state general fund.

5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

E. If the board believes that the charge is or may be true, the board shall serve on the licensee a summons and complaint that fully states the conduct or inability concerned and the time and place of the hearing. The board shall schedule the hearing not less than thirty days after the date of the summons and complaint.

F. The board may require that the licensee under investigation undergo any mental and physical examination and may conduct any investigation, including the taking of depositions, necessary to fully inform itself with respect to the complaint.

G. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board a written and verified answer to the charges within twenty days after service of the summons and complaint. A licensee who complies with this subsection may be present at the hearing with any witnesses of the licensee's choice.

H. The board may issue subpoenas for any witnesses, documents and other evidence it may need and for any witnesses, documents and other evidence the licensee may request. The superior court may hold a person who refuses to obey a subpoena in contempt of court.

I. Service of the summons and complaint shall be as provided for service of the summons and complaint in civil cases.

J. Service of subpoenas for witnesses shall be as provided by law for the service of subpoenas generally.

K. The board may administer the oath to all witnesses, shall keep a written transcript of all oral testimony submitted at the hearing and shall keep the original or a copy of all other evidence submitted. The board shall make copies of the transcript available to the licensee at that person's expense and without charge to the court in which the appeal may be taken. At all hearings the board may waive the technical rules of evidence.

L. A licensee who, after a hearing held pursuant to this section, is found to be guilty of a violation of section 32-852 or this section is subject to censure, probation as provided in this section, suspension of a license or revocation of a license, or any combination of these, for a period of time or permanently and under any conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may file a letter of concern if it finds that the violation is not of sufficient seriousness to merit censure, probation or suspension or revocation of a license. THE BOARD MAY ALSO ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or information received and records kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public.

N. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

O. This section and any other law relating to a privileged communication do not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

P. If the board acts to modify any podiatrist's prescription writing privileges, it shall immediately notify the state board of pharmacy of the modification.

Q. A letter of concern is a public document and may be used in future disciplinary actions against a podiatrist.

Sec. 2. Section 32-924, Arizona Revised Statutes, is amended to read:

32-924. <u>Grounds for disciplinary action; hearing; civil penalty; definition</u>

A. The following are grounds for disciplinary action, regardless of where they occur:

1. Employment of fraud or deception in securing a license.

2. Practicing chiropractic under a false or assumed name.

3. Impersonating another practitioner.

4. Habitual use of alcohol, narcotics or stimulants to the extent of incapacitating the licensee for the performance of professional duties.

5. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession.

6. Conviction of a misdemeanor involving moral turpitude or of a felony.

7. Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

8. Representing that a manifestly incurable condition can be permanently cured, or that a curable condition can be cured within a stated time, if this is not true.

9. Offering, undertaking or agreeing to cure or treat a condition by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a condition.

11. Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

12. Acting or assuming to act as a member of the board if this is not true.

13. Advertising in a false, deceptive or misleading manner.

14. Refusal, revocation or suspension of a license by any other state or country, unless it can be shown that the action was not taken for reasons that relate to the ability to safely and skillfully practice chiropractic or to any act of unprofessional conduct.

15. Any conduct or practice contrary to recognized standards in chiropractic or any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public or any conduct, practice or condition that impairs the ability of the licensee to safely and skillfully practice chiropractic.

16. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter or any board order.

17. Failing to sign the physician's name, wherever required, in any capacity as "chiropractic doctor", "chiropractic physician" or "doctor of chiropractic" or failing to use and affix the initials "D.C." after the physician's name.

18. Failing to place or cause to be placed the word or words "chiropractic", "chiropractor", "chiropractic doctor" or "chiropractic physician" in any sign or advertising media.

19. Using physiotherapy without passing an examination in that subject and without being certified in that specialty by the board.

20. Using acupuncture without passing an examination in that subject and without being certified in that specialty by the board.

21. Engaging in sexual intercourse or oral sexual contact with a patient in the course of treatment.

22. Billing or otherwise charging a patient or third party payor for services, appliances, tests, equipment, an x-ray examination or other procedures not actually provided.

23. Intentionally misrepresenting to or omitting a material fact from the patient or third party payor concerning charges, services, appliances, tests, equipment, an x-ray examination or other procedures offered or provided.

24. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures for a specified price without also specifying the services, procedures or items included in the advertised price.

25. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures as free without also disclosing what services or items are included in the advertised service or item.

26. Billing or charging a patient or third party payor a higher price than the advertised price in effect at the time the services, appliances, tests, equipment, x-ray examinations or other procedures were provided.

27. Advertising a specialty or procedure that requires a separate examination or certificate of specialty, unless the licensee has satisfied the applicable requirements of this chapter.

28. Solicitation by the licensee or by the licensee's compensated agent of any person who is not previously known by the licensee or the licensee's agent, and who at the time of the solicitation is vulnerable to undue influence, including any person known to have experienced any of the following within the last fifteen days:

(a) Involvement in a motor vehicle accident.

(b) Involvement in a work-related accident.

(c) Injury by, or as the result of actions of, another person.

B. The board on its own motion or on receipt of a complaint may investigate any information that appears to show that a doctor of chiropractic is or may be in violation of this chapter or board rules or is or may be mentally or physically unable to safely engage in the practice of chiropractic. The board shall notify the licensee as to the content of the complaint as soon as is reasonable. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action.

C. The board may require a licensee under investigation pursuant to this section to be interviewed by the board or its representatives. The board may require a licensee who is under investigation pursuant to this section to undergo, at the licensee's expense, any combination of medical, physical or mental examinations that the board finds necessary to determine the licensee's competence.

D. If the board finds based on the information it receives under subsections B and C that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its

order, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board takes this action it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the licensee, it may take ~~either~~ ANY of the following actions:

1. Dismiss the complaint if in the board's opinion the information is without merit or does not warrant sanction of the licensee.

2. Issue an advisory letter. An advisory letter is a nondisciplinary action and is a public document.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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. FAILURE TO COMPLETE A NONDISCIPLINARY ORDER REQUIRING CONTINUING EDUCATION IS A VIOLATION OF SUBSECTION A, PARAGRAPH 16.

F. The board may request a formal interview with the licensee concerned. At a formal interview the board may receive and consider pertinent documents and sworn statements of persons who may be called as witnesses in a formal hearing. Legal counsel may be present and participate in the formal interview. If the licensee refuses the request or if the licensee accepts the request and the results of the interview indicate suspension or revocation of the license may be in order, the board shall issue a complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after the formal interview, the board finds that the information provided pursuant to this section is true but is not of sufficient seriousness to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint if in the board's opinion the information is without merit or does not warrant sanction of the licensee.

2. Issue an advisory letter. An advisory letter is a nondisciplinary action and is a public document.

3. Issue an order to cease and desist.

4. Issue a letter of concern.

5. Issue an order of censure. An order of censure is an official action against the licensee and may include a requirement for restitution of fees to a patient resulting from a violation of this chapter or board rules.

6. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Any costs incidental to the terms of probation are at the licensee's own expense. Probation may include restrictions on the licensee's license to practice chiropractic.

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

8. Refuse to renew a license.

9. ISSUE A DISCIPLINARY OR NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

G. If the board believes the charge is of such magnitude as to warrant suspension or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of a complaint and hearing by certified mail addressed to the licensee's last known address on record in the board's files. The notice of a complaint and hearing is effective on the date of its deposit in the mail. The board shall hold a formal hearing within one hundred eighty days after that date.

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

I. Any licensee who, after a hearing, is found to be in violation of this chapter or board rules or is found to be mentally or physically unable to safely engage in the practice of chiropractic is subject to any combination of those disciplinary actions identified in subsection F or suspension or revocation of the license. In addition, the board may order the licensee to pay restitution or all costs incurred in the course of the investigation and formal hearing in the matter, or both.

J. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

K. The board may accept the surrender of an active license from a licensee who admits in writing to having violated this chapter or board rules.

L. For THE purposes of this section, "solicitation" includes contact in person, by telephone, telegraph or telefacsimile or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient.

Sec. 3. Section 32-1263.01, Arizona Revised Statutes, is amended to read:

32-1263.01. <u>Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; classification</u>

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.
2. Suspension of license to practice.
3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.
4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.
5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
6. Imposition of a requirement for restitution of fees to the aggrieved party.
7. Imposition of restrictions on the scope of practice.
8. Imposition of peer review and professional education requirements.
9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. THE BOARD MAY ALSO ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

C. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

E. If the board acts to modify any dentist's prescription writing privileges, it shall immediately notify the state board of pharmacy of the modification.

F. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

G. A licensee or certificate holder shall respond in writing to the board within twenty days after notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint and the board may revoke or suspend the license without a hearing.

1 Sec. 4. Section 32-1451, Arizona Revised Statutes, is amended to read:
2 32-1451. Grounds for disciplinary action; duty to report;
3 immunity; proceedings; board action; notice
4 requirements
5 A. The board on its own motion may investigate any evidence that
6 appears to show that a doctor of medicine is or may be medically incompetent,
7 is or may be guilty of unprofessional conduct or is or may be mentally or
8 physically unable safely to engage in the practice of medicine. On written
9 request of a complainant, the board shall review a complaint that has been
10 administratively closed by the executive director and take any action it
11 deems appropriate. Any person may, and a doctor of medicine, the Arizona
12 medical association, a component county society of that association and any
13 health care institution shall, report to the board any information that
14 appears to show that a doctor of medicine is or may be medically incompetent,
15 is or may be guilty of unprofessional conduct or is or may be mentally or
16 physically unable safely to engage in the practice of medicine. The board or
17 the executive director shall notify the doctor as to the content of the
18 complaint as soon as reasonable. Any person or entity that reports or
19 provides information to the board in good faith is not subject to an action
20 for civil damages. If requested, the board shall not disclose the name of a
21 person who supplies information regarding a licensee's drug or alcohol
22 impairment. It is an act of unprofessional conduct for any doctor of
23 medicine to fail to report as required by this section. The board shall
24 report any health care institution that fails to report as required by this
25 section to that institution's licensing agency.
26 B. The chief executive officer, the medical director or the medical
27 chief of staff of a health care institution shall inform the board if the
28 privileges of a doctor to practice in that health care institution are
29 denied, revoked, suspended or limited because of actions by the doctor that
30 appear to show that the doctor is or may be medically incompetent, is or may
31 be guilty of unprofessional conduct or is or may be mentally or physically
32 unable to safely engage in the practice of medicine, along with a general
33 statement of the reasons, including patient chart numbers, that led the
34 health care institution to take the action. The chief executive officer, the
35 medical director or the medical chief of staff of a health care institution
36 shall inform the board if a doctor under investigation resigns or if a doctor
37 resigns in lieu of disciplinary action by the health care
38 institution. Notification shall include a general statement of the reasons
39 for the resignation, including patient chart numbers. The board shall inform
40 all appropriate health care institutions in this state as defined in section
41 36-401 and the Arizona health care cost containment system administration of
42 a resignation, denial, revocation, suspension or limitation, and the general
43 reason for that action, without divulging the name of the reporting health
44 care institution. A person who reports information in good faith pursuant to
45 this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, 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 and other examinations known to detect the presence of alcohol or other drugs. 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 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. ~~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~~ REQUIRE THE LICENSEE TO COMPLETE DESIGNATED CONTINUING MEDICAL EDUCATION COURSES.

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. REQUIRE THE LICENSEE TO COMPLETE DESIGNATED CONTINUING MEDICAL EDUCATION COURSES.

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.

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 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.

5. File a letter of reprimand.

6. 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.

7. 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.

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.

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.

Sec. 5. Section 32-1551, Arizona Revised Statutes, is amended to read:

32-1551. <u>Disciplinary action; duty to report; investigatory powers; immunity; hearing; appeal; notice</u>

A. The board on its own motion may investigate any evidence that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic medicine. Any person may, and a doctor of naturopathic medicine, the Arizona naturopathic medical association, a component society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic 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 naturopathic 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 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 this section. These examinations may include biological fluid testing and psychological or psychiatric evaluation. 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.

C. If the board finds, based on the information it receives under 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 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.

D. 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 may take ~~either~~ ANY of the following actions:

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

2. File a letter of concern.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

E. 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 naturopathic medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program.

F. 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 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 may 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 the information provided under 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 a letter of concern.

3. File a letter of reprimand.

4. 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. 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 license suspension for not to exceed twelve months, restriction of the doctor's license to practice naturopathic 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 terms of probation, a consent agreement or a stipulated agreement.

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 naturopathic 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 E of this section.

7. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

G. If the board finds that the information provided in an investigation warrants suspension or revocation of a license issued under this chapter, it must initiate formal proceedings pursuant to title 41, chapter 6, article 10.

H. Any doctor of naturopathic medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of naturopathic medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension or revocation of a license or any combination of these under any 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.

I. If the naturopathic physicians board of medical examiners acts to modify any doctor's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

J. 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.

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

L. 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.

M. 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 naturopathic medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

N. The board may administer the oath to all witnesses and shall keep a written transcript of all oral testimony submitted at the hearing and the original or a copy of all other evidence submitted. The board may waive the technical rules of evidence at any hearing conducted under this section.

O. Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa County may be taken from decisions of the board pursuant to title 12, chapter 7, article 6.

Sec. 6. Section 32-1744, Arizona Revised Statutes, is amended to read:

32-1744. <u>Board investigations; duty to report violations; hearing; decision of board; informal settlement conference</u>

A. The board on its own motion shall investigate any evidence that appears to show that a licensee may be guilty of a violation of section 32-1743. Any person may report to the board information the person may have that appears to show that a licensee may be guilty of unprofessional conduct or of practice without regard for the safety and welfare of the public. A

1 person who reports or provides information to the board in good faith is not
2 subject to civil damages as a result, and the name of the person reporting
3 shall not be disclosed unless the information is necessary to conduct an
4 investigation or is essential to disciplinary proceedings conducted pursuant
5 to this section.
6 B. The board, its designee or the executive director shall require a
7 licensee to provide a written response to a complaint within twenty days
8 after the licensee receives the notification of complaint.
9 C. Except as provided in subsection E of this section, if in the
10 opinion of the board it appears that information provided under subsection A
11 of this section may be accurate and a violation of this chapter, the board
12 shall request an informal interview with the licensee before proceeding to a
13 formal hearing. If the licensee refuses an invitation for an informal
14 interview, or if the licensee accepts the invitation and if the results of
15 the interview indicate suspension or revocation of license may be in order, a
16 complaint shall be issued and a formal hearing held pursuant to title 41,
17 chapter 6, article 10. If at the informal interview the board finds the
18 information provided under subsection A of this section is accurate but not
19 of sufficient seriousness to merit suspension exceeding thirty days or
20 revocation of the license, it may take any or all of the following actions:
21 1. Issue a decree of censure or written reprimand.
22 2. Fix a period and terms of probation best adapted to protect the
23 public health and safety and rehabilitate the licensee. Probation may
24 include a requirement for a refund of fees and charges to professional
25 services clients resulting from services performed in violation of this
26 chapter or rules adopted pursuant to this chapter, restriction of a license
27 to practice or temporary suspension not to exceed thirty days. Failure to
28 comply with probation is cause for filing a complaint and holding a formal
29 hearing pursuant to title 41, chapter 6, article 10.
30 3. Impose a civil penalty of not more than one thousand dollars for
31 each violation of this chapter.
32 4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
33 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
34 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
35 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.
36 D. If the board determines that a reasonable basis exists to believe
37 that a violation of this chapter or rules adopted pursuant to this chapter
38 has occurred and the violation is not sufficiently serious to warrant
39 disciplinary action, it may send a letter of concern to the licensee. The
40 letter of concern shall advise the licensee of the possible violation and the
41 board's decision not to initiate proceedings. If violations occur after the
42 board sends a letter of concern, the board may initiate proceedings on all
43 violations, including the violation that was the subject of the letter of
44 concern.

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

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

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

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

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

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

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

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

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

M. A licensee who, after a hearing, is found to be guilty by the board of a violation of this chapter is subject to censure, probation or civil penalty as provided in subsection C of this section, suspension of license or

revocation of license, or any combination of these, and for the period of time or permanently and under the conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of formal hearings to the licensee who is in violation of this chapter.

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

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

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

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

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

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

S. A licensee who is the subject of a disciplinary action may request an informal settlement conference. The licensee must submit a request for an informal settlement conference to the board in writing. The board shall hold an informal settlement conference within fifteen days after it receives a request to do so from the licensee. Only a person with the authority to act on behalf of the board may represent the board at the informal settlement conference. The board representative shall notify the licensee in writing that any written or oral statement made by the licensee at the informal settlement conference, including statements for the purpose of settlement negotiations, is inadmissible in any subsequent hearing. A licensee who participates in an informal settlement conference waives the right to object

to the participation of the board representative in the final administrative decision.

Sec. 7. Section 32-1855, Arizona Revised Statutes, is amended to read:

32-1855. Disciplinary action; duty to report; hearing; notice; independent medical examinations; surrender of license

A. The board on its own motion may investigate any information that appears to show that an osteopathic physician and surgeon 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. Any osteopathic physician or surgeon or the Arizona osteopathic medical association or any health care institution as defined in section 36-401 shall, and any other person may, report to the board any information ~~such~~ THE physician or surgeon, association, health care institution or other person may have that appears to show that an osteopathic physician and surgeon 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 shall notify the doctor about whom information has been received as to the content of the information as soon as reasonable after receiving the information. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action. If requested the board shall not disclose the informant's name unless it is essential to the disciplinary proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any osteopathic physician or surgeon 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. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

B. The board may require a physician under investigation pursuant to subsection A of this section to be interviewed by the board or its representatives. The board or the executive director may require a licensee who is under investigation pursuant to subsection A of this section to undergo at the licensee's expense any combination of medical, physical or mental examinations the board finds necessary to determine the physician's competence.

C. If the board finds, based on the information it received 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 order a summary suspension of a license pending proceedings for revocation or other action. If an order of summary suspension is issued, the licensee shall also be served with a written notice of complaint and formal hearing setting forth the charges made against the licensee and is entitled to a formal hearing on the charges pursuant to title 41, chapter 6, article 10. Formal proceedings shall be promptly instituted and determined.

D. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the physician's license, it may take any combination of the following actions:

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

2. File a letter of concern.

3. In addition to the requirements of section 32-1825, Require continuing medical education on subjects and within a time period determined by the board.

4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

E. If, in the opinion of the board, it appears information provided pursuant to this section is or may be true, the board may request an investigative hearing with the physician concerned. At an investigative hearing the board may receive and consider sworn statements of persons who may be called as witnesses in a formal hearing and other pertinent documents. Legal counsel may be present and participate in the meeting. If the physician refuses the request or if the physician accepts the request and the results of the investigative hearing indicate suspension of more than twelve months or revocation of the license may be in order, a complaint shall be issued and an administrative hearing shall be held pursuant to title 41, chapter 6, article 10. If, after the investigative hearing and a mental, physical or medical competence examination as the board deems necessary, the board finds the information provided pursuant to this section to be true but not of sufficient seriousness to merit suspension or revocation of the license, it may take any of the following actions:

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

2. File a letter of concern.

3. In addition to the requirements of section 32-1825, require continuing medical education on subjects and within a time period determined by the board.

4. Issue a decree of censure, which constitutes an official action against a physician's license.

5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician concerned. Any costs incidental to the terms of probation are at the physician's own expense.

6. Restrict or limit the physician's practice in a manner and for a time determined by the board.

7. Suspend the physician's license for not more than twelve months.

8. Impose a civil penalty of not to exceed five hundred dollars for each violation of this chapter.

9. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

F. If, in the opinion of the board, it appears the charge is of such magnitude as to warrant suspension for more than twelve months or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of a complaint and hearing by certified mail addressed to the licensee's last known address on record in the board's files.

G. If the physician wishes to be present at the investigative or administrative hearing in person or by representation, or both, the physician shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the summons and complaint.

H. A physician who complies with subsection G of this section may be present at the hearing in person with counsel and witnesses.

I. A physician who, after an investigative or administrative hearing, is found to be guilty of unprofessional conduct or is found to be mentally or physically unable safely to engage in the practice of osteopathic medicine is subject to any combination of censure, probation, suspension of license, revocation of license, an order to return patient fees, imposition of hearing costs, imposition of a civil penalty of not to exceed five hundred dollars for each violation for ~~such~~ A period of time, or permanently, and under conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of an investigative or administrative hearing to the licensee if pursuant to that hearing the board determines that the licensee violated this chapter or board rules.

J. If the board acts to modify a physician's prescription writing privileges, it shall immediately notify the state board of pharmacy and the federal drug enforcement administration in the United States department of justice of the modification.

K. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

L. Notice of a complaint and administrative hearing is effective when a true copy of the notice is sent by certified mail to the licensee's last known address of record in the board's files and is complete on the date of its deposit in the mail. The board shall hold an administrative hearing within one hundred twenty days after that date.

M. The board may accept the surrender of an active license from a licensee who admits in writing to having committed an act of unprofessional conduct or to having violated this chapter or board rules.

Sec. 8. Section 32-2045, Arizona Revised Statutes, is amended to read:

32-2045. Investigative powers; emergency action

A. To enforce this chapter the board may:

1. Receive complaints filed against licensees or certificate holders and conduct a timely investigation.

2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of this chapter.

3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.

4. Take emergency action ordering the summary suspension of a license or certificate or the restriction of the licensee's practice or certificate holder's employment pending proceedings by the board.

5. Require a licensee or certificate holder to be examined in order to determine the licensee's or certificate holder's mental, physical or professional competence to practice or work in the field of physical therapy.

B. If the board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit direct action against the licensee or certificate holder it may take either of the following actions:

1. Dismiss the complaint if the board believes the information or complaint is without merit.

2. Issue an advisory letter. The issuance of an advisory letter is a nondisciplinary action to notify a licensee or certificate holder that, while there is not sufficient evidence to merit disciplinary action, the board believes that the licensee or certificate holder should be educated about the requirements of this chapter and board rules. An advisory letter is a public document and may be used in future disciplinary actions against a licensee or certificate holder.

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

C. The board shall notify a licensee or certificate holder of a complaint and the nature of the complaint within ninety days after receiving the complaint.

D. Any person may submit a complaint regarding any licensee, certificate holder or other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

E. The board shall keep confidential all information relating to the receipt and investigation of complaints filed against licensees and

certificate holders until the information becomes public record or as required by law.

Sec. 9. Section 32-2081, Arizona Revised Statutes, is amended to read:

32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days of receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board ~~when~~ IF the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. The chairman of the board shall appoint a complaint screening committee of not less than three members of the board including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. The complaint screening committee shall review all complaints, and based on the information provided pursuant to subsection A or B of this section may take either of the following actions:

1. Dismiss the complaint if the committee determines that the complaint is without merit. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's web site.

2. Refer the complaint to the full board for further review and action.

E. If the board finds, based on the information it receives under subsection A or B of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

F. If the board finds that the information provided pursuant to subsection A or B of this section is not of sufficient seriousness to merit direct action against the licensee, it may take ~~either~~ ANY of the following actions:

1. Dismiss if the board believes the information is without merit.

2. File a letter of concern.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, it may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for not to exceed twelve months, restriction of the license or restitution of fees to a client resulting from violations of this chapter. If a licensee fails to comply with a term of probation the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.

6. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

H. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.

2. Censure the licensee.

3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services it shall inform the appropriate criminal justice agency.

Sec. 10. Section 32-2234, Arizona Revised Statutes, is amended to read:

32-2234. Informal and formal hearings; censure or probation; notice; consent agreements; rehearing; judicial review

A. If the board receives information indicating that a veterinarian may have engaged in unprofessional or dishonorable conduct, and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may request an informal interview with the veterinarian. If the veterinarian refuses the interview, and other evidence indicates suspension or revocation of the veterinarian's license may be in order, or if the veterinarian accepts and the results of the interview indicate suspension or revocation of the veterinarian's license may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the veterinarian refuses the interview, and other evidence relating to the veterinarian's professional competence indicates that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, or if the veterinarian accepts the informal interview and the informal interview and other evidence relating to the veterinarian's professional competence indicate that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, the board may take any or all of the following actions:

1. Issue a decree of censure.

2. Fix ~~such~~ A period and terms of probation as are best adapted to protect the public and rehabilitate or educate the veterinarian. The terms of probation may include temporary suspension, for not to exceed thirty days, or restriction of the veterinarian's license to practice. The failure to comply with any term of the probation is cause to consider the entire case plus any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not to exceed one thousand dollars per violation.

B. If, as a result of information ascertained during an investigation, informal interview or formal hearing of a veterinarian, the board has concern for the veterinarian's conduct but has not found the veterinarian's conduct in violation of section 32-2232, the board in its discretion may issue a letter of concern to the veterinarian regarding the veterinarian's conduct OR ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

C. Notwithstanding subsection A of this section, the board may enter into a consent agreement with a veterinarian either before or after conducting an informal interview. Pursuant to a consent agreement, the board

may take any of the disciplinary actions listed in subsection A, paragraphs 1, 2 and 3 of this section or may act to otherwise limit or restrict the veterinarian's practice or to rehabilitate the veterinarian.

D. If the board finds, based on information it receives pursuant to this section, that public or animal health, safety or welfare requires emergency action, and incorporates a finding that emergency action is necessary in its order, the board may order summary suspension of a license pending proceedings for revocation or other action. If the board orders a summary suspension, the board shall 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 pursuant to title 41, chapter 6, article 10.

E. Before a permit or license may be revoked or suspended for any cause provided by section 32-2233, other than by terms of probation, the board must serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.

F. After service of notice of the decision of the board suspending or revoking a license, censuring a licensee, placing a licensee on probation or dismissing the complaint, the licensee may apply for a rehearing or review by filing a motion pursuant to title 41, chapter 6, article 10. The filing of a motion for rehearing shall be a condition precedent to the right of appeal provided by this section. The filing of a motion for rehearing shall suspend the operation of the board's action in suspending or revoking a license or censuring or placing a licensee on probation and shall allow the licensee to continue to practice as a veterinarian pending denial or granting of the motion and pending the decision of the board ~~upon~~ ON rehearing if the motion is granted. The board may also grant a rehearing on its own motion, if it finds newly discovered evidence or any other reason justifying a reconsideration of the matter.

G. Except as provided in section 41-1092.08, subsection H, any party aggrieved by a final order or decision of the board may appeal to the superior court pursuant to title 12, chapter 7, article 6.

H. If the state veterinary medical examining board acts to modify any veterinarian's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

I. All notices ~~which~~ THAT the board is required to provide to any person under this chapter are fully effective by personal service or by mailing a true copy of the notice by certified, return receipt mail addressed to the person's last known address of record in the board's files. Notice by mail is complete at the time of its deposit in the mail. Service on any person represented in a matter by an attorney is complete when the notice is sent to the attorney at the last known address of record in the board's files.

J. The board shall retain all complaint files for at least ten years and shall retain all complaint files in which disciplinary action was taken for at least twenty-five years.

Sec. 11. Section 32-2551, Arizona Revised Statutes, is amended to read:

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. The board or the executive director shall notify the physician assistant and the approved supervising physician of the content of the reported information in writing within one hundred twenty days of its receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations including investigational interviews between representatives of the board and the physician assistant and the supervising physician as it deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be

1 served with a written notice of complaint and formal hearing, setting forth
2 the charges, and is entitled to a formal hearing before the board or an
3 administrative law judge on the charges within sixty days pursuant to title
4 41, chapter 6, article 10.
5 D. If, after completing its investigation, the board finds that the
6 information provided pursuant to subsection A of this section is not of
7 sufficient seriousness to merit disciplinary action against the physician
8 assistant's license, it may take the following actions:
9 1. Dismiss if, in the opinion of the board, the complaint is without
10 merit.
11 2. File an advisory letter. The licensee may file a written response
12 with the board within thirty days after receiving the advisory letter.
13 3. REQUIRE THE LICENSEE TO COMPLETE DESIGNATED CONTINUING MEDICAL
14 EDUCATION COURSES.
15 E. If the board finds that it can take rehabilitative or disciplinary
16 action without the presence of the physician assistant at a formal interview
17 it may enter into a consent agreement with the physician assistant to limit
18 or restrict the physician assistant's practice or to rehabilitate the
19 physician assistant, protect the public and ensure the physician assistant's
20 ability to safely practice. The board may also require the physician
21 assistant to successfully complete a board approved rehabilitative,
22 retraining or assessment program at the physician assistant's own expense.
23 F. The board shall not disclose the name of the person who provided
24 the information regarding a licensee's drug or alcohol impairment or the name
25 of the person who files a complaint if that person requests anonymity.
26 G. If, after completing its investigation, the board believes that the
27 information is or may be true and that the information may be of sufficient
28 seriousness to merit direct action against the physician assistant's license,
29 it may request a formal interview with the physician assistant and the
30 supervising physician. If the physician assistant refuses the invitation for
31 a formal interview, the board may issue a formal complaint and order that a
32 hearing be held pursuant to title 41, chapter 6, article 10. The board shall
33 notify the physician assistant in writing of the time, date and place of the
34 formal interview at least twenty days before the interview. The notice shall
35 include the right to be represented by counsel and shall fully set forth the
36 conduct or matters to be discussed.
37 H. After the formal interview, the board may take the following
38 actions:
39 1. Dismiss if, in the opinion of the board, the information is without
40 merit.
41 2. File an advisory letter. The licensee may file a written response
42 with the board within thirty days after receiving the advisory letter.
43 3. Enter into a stipulation with the physician assistant to restrict
44 or limit the physician assistant's practice or medical activities or to
45 rehabilitate, retrain or assess the physician assistant, in order to protect

the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.

4. File a letter of reprimand.

5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant'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.

6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:

(a) Restrictions on the health care tasks the physician assistant may perform.

(b) Temporary suspension for not to exceed twelve months.

(c) Restitution of patient fees.

(d) Education or rehabilitation at the licensee's own expense.

7. REQUIRE THE LICENSEE TO COMPLETE DESIGNATED CONTINUING MEDICAL EDUCATION COURSES.

I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, it shall immediately initiate formal proceedings for the suspension or revocation of the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate for the protection of the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than three hundred 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 and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the Arizona regulatory board of physician assistants determines that a criminal violation may have occurred involving the performance of health care tasks, it shall provide evidence of the violation to the appropriate criminal justice agency.

P. 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.

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

Sec. 12. Section 32-2821, Arizona Revised Statutes, is amended to read:

32-2821. Revocation or suspension of certificate; other disciplines; grounds; procedures; penalty; judicial review

A. The certificate of a technologist or permit holder may be suspended for a fixed period, or may be revoked, or ~~such~~ THE technologist may be censured, reprimanded or otherwise disciplined, if after a hearing pursuant to title 41, chapter 6, article 10 it is determined that the holder of the certificate or permit:

1. Is guilty of any fraud or deceit in activities as a technologist or has been guilty of any fraud or deceit in procuring or maintaining a certificate.

2. Has been convicted in a court of competent jurisdiction~~, either within or without this state,~~ of a crime involving moral turpitude. If the conviction has been reversed and the holder of the certificate or permit has been discharged or acquitted or if the holder of the certificate or permit has been pardoned or the holder's civil rights have been restored, the certificate may be restored.

3. Is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.

4. Has knowingly aided or abetted a person, not otherwise authorized, who is not a certified technologist or has not been issued a special permit in engaging in the activities of a technologist.

5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified technologist or permit holder pursuant to this chapter.

6. Has impersonated a duly certified technologist or permit holder or former duly certified technologist or permit holder or is engaging in the activities of a technologist or permit holder under an assumed name.

7. Has been guilty of unethical professional conduct.

8. Has continued to practice without obtaining a certificate renewal or a special permit renewal.

9. Has applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.

10. Has acted or is acting as an owner, co-owner or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation or the treatment of disease, without being under the direction of a licensed practitioner.

11. Has used or is using the prefix "Dr.", the word "doctor" or any prefix or suffix to indicate or imply that the person is a duly licensed practitioner ~~when not so licensed~~ IF THIS IS NOT TRUE.

12. Is or has been guilty of incompetence or negligence in activities as a technologist.

13. Is or has been afflicted with any medical problem, disability or addiction, that the board determines impairs the certificate or permit holder's professional competence.

14. Has interpreted a diagnostic image for a physician, a patient, the patient's family or the public.

B. Proceedings pursuant to this section against any certified technologist or permit holder shall begin by filing with the board a written charge or charges under oath against the technologist or permit holder. The charges may be preferred by any person, corporation, association or public officer or by the board on its own motion. A copy of the charges, together with a report of ~~such~~ THE investigation as the board deems proper, shall be referred to the chairman of the board for review. If the chairman decides that the charges should be heard, the chairman shall designate three or more members of the board as a committee to hear and report on the charges and shall set a time and place for the hearing pursuant to title 41, chapter 6, article 10. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the person charged either personally or by certified mail at least twenty days before the date fixed for the hearing. The board or its committee ~~shall have power to~~ MAY issue subpoenas for the appearance of witnesses and to take testimony under oath.

C. If the certificate of any person has been revoked or suspended the board may, after the expiration of two years, entertain an application for

restoration of the certificate under conditions to be prescribed by the board for each individual case.

D. The board may impose a penalty of not to exceed two hundred fifty dollars for each violation of this section. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the state general fund.

E. Except as provided in section 41-1092.08, subsection H, a person may appeal a final board decision to the superior court pursuant to title 12, chapter 7, article 6.

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

Sec. 13. Section 32-2934, Arizona Revised Statutes, is amended to read:

32-2934. Grounds for suspension or revocation of license; duty to report; unprofessional conduct hearing; decision of board

A. The board on its own motion may investigate any evidence ~~which~~ THAT appears to show that a homeopathic physician is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of medicine. Any homeopathic physician, the Arizona homeopathic medical association or any health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the person may have ~~which~~ THAT appears to show that a homeopathic physician is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of medicine. The board shall notify the homeopathic physician about whom information is received as to the content of the information within one hundred twenty days after receipt of the information. Any person who reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing the information, and the person's name shall not be disclosed unless the person's testimony is essential to the disciplinary proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any homeopathic physician to fail to report as required by this section. Any health care institution ~~which~~ THAT fails to report as required by this section shall be reported by the board to the institution's licensing agency.

B. A health care institution shall inform the board ~~when~~ IF the privileges of a homeopathic physician to practice in the health care institution are denied, revoked, suspended or limited because of actions by the homeopathic physician ~~which~~ THAT jeopardized patient health and welfare or if the physician resigns during pending proceedings for revocation, suspension or limitation of privileges. A report to the board pursuant to

this subsection shall contain a general statement of the reasons the health care institution denied or took action to revoke, suspend or limit a homeopathic physician's privileges.

C. The board may conduct investigations necessary to fully inform itself with respect to any evidence filed with the board under subsection A of this section. As part of this investigation, the board may require the physician under investigation to be interviewed by board representatives or to undergo any combination of mental, physical, oral or written medical competency examinations.

D. If the information gathered under subsections A and B of this section indicates that the protection of public health requires that the board take emergency action, it may order the summary suspension of a license pending the outcome of a formal disciplinary hearing pursuant to title 41, chapter 6, article 10. The board shall serve the suspended licensee with a written notice of the specific charges and the time and place of the formal hearing. The board shall hold this hearing within sixty days of the suspension unless the board for good reason shown by the licensee grants an extension on the hearing date.

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 direct action against the license of the homeopathic physician it may take ~~either~~ ANY of the following actions:

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

2. File a letter of concern.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

F. If after completing its initial investigation under subsection A of this section the board determines that rehabilitative or disciplinary action can be taken without the presence of the licensee at an informal interview, the board and the licensee may enter into a stipulated agreement to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of homeopathic medicine.

G. If after completing its investigation the board believes that this information is or may be true, the board may request an informal interview with the homeopathic physician. If the homeopathic physician refuses the invitation or accepts the invitation and the results of the interview indicate that suspension or revocation of the license may be in order, the board shall issue a formal complaint and conduct a formal hearing pursuant to title 41, chapter 6, article 10. If after completing the informal interview the board finds that the information provided under subsection A of this

section is not of sufficient seriousness to merit suspension or revocation of the license, it may take the following actions:

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

2. File a letter of concern.

3. Issue a decree of censure. A DECREE OF CENSURE ~~which~~ constitutes an official action against the homeopathic physician's license and ~~which~~ may include a requirement for restitution of fees to a patient resulting from violations of this chapter or board rules.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the homeopathic physician. The probation, if deemed necessary, may include temporary suspension of the license for not to exceed twelve months, restriction of the homeopathic physician's license to practice medicine or a requirement for restitution of fees to a patient resulting from violations of this chapter or board rules. If a licensee fails to comply with the terms of probation the board may file a summons, complaint and notice of hearing pursuant to title 41, chapter 6, article 10 based on the information considered by the board at the informal interview and any other acts or conduct alleged to be in violation of this chapter or board rules.

5. Enter into an agreement with the homeopathic physician to restrict or limit the homeopathic physician's practice or medical activities in order to rehabilitate the homeopathic physician, protect the public and ~~insure~~ ENSURE the homeopathic physician's ability to safely engage in the practice of medicine.

6. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

H. In an informal interview or a formal hearing the board, in addition to any other action that it may take, may impose an administrative penalty in an amount of not less than five hundred dollars but not to exceed two thousand dollars on a homeopathic physician who violates this chapter or a board rule. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter.

I. If in the opinion of the board it appears that the allegations concerning a homeopathic physician are of a magnitude as to warrant suspension or revocation of the license, the board shall serve on the physician a summons and a complaint fully setting forth the conduct or inability concerned and setting a date, time and place for a hearing pursuant to title 41, chapter 6, article 10 to be held before the board in not less than sixty days from the date of the notice.

J. A licensee who wishes to be present at the hearing in person or by representation, or both, shall file a verified answer with the board within twenty days after receiving service of the summons and complaint. The licensee may present witnesses at this hearing.

K. The board shall issue subpoenas for witnesses as it may need and for witnesses as the physician may request. Any person refusing to obey a subpoena shall be certified by the board to the superior court in the county in which service was made, and the court may institute proceedings for contempt of court.

L. Service of the summons and complaint shall be as required in civil cases.

M. Service of subpoenas for witnesses shall be as provided by law for the service of subpoenas generally.

N. Any homeopathic physician who after a hearing is found to be guilty of unprofessional conduct or is found to be mentally or physically unable to engage safely in the practice of homeopathic medicine is subject to any combination of censure, probation or suspension of license or revocation of the license for a prescribed period of time or permanently and under conditions that the board deems appropriate for the protection of the public health and safety and just in the circumstances.

O. If the board acts to modify any homeopathic physician's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

P. Notwithstanding section 32-2906, subsection A, the board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from administrative penalties paid pursuant to this section in the state general fund.

Q. A letter of concern is a nondisciplinary public document that the board may use in future disciplinary actions.

Sec. 14. Section 32-3281, Arizona Revised Statutes, is amended to read:

32-3281. <u>Disciplinary action; hearings; civil penalty</u>

A. A credentialing committee, on its own motion or on a complaint, may investigate any evidence that appears to show that a licensee is or may be 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 behavioral health. As part of its investigation, a credentialing committee may hold an investigational meeting pursuant to this chapter. Any person may, and a licensee and any entity licensed by the office of behavioral health licensure shall, report to the board any information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any licensee to fail to

report as required by this section. The board shall report to the office of behavioral health licensure in the department of health services any entity licensed by the office of behavioral health licensure that fails to report as required by this section.

B. A credentialing committee shall require any combination of mental, physical or oral or written competency examinations, at the licensee's own expense, and conduct necessary investigations, including investigational interviews between representatives of the board and the licensee, 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 credentialing committee may require the licensee, at the licensee's expense, to undergo assessment by a rehabilitative, retraining or assessment program approved by the credentialing committee.

C. If the board finds, based on the information received pursuant to subsection A or 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 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 must 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.

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

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

2. Recommend ~~either~~ ANY of the following actions to the board:

(a) Dismiss if, in the opinion of the credentialing committee, the complaint is without merit.

(b) File a letter of concern and dismiss the complaint.

(c) ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

E. A complaint dismissed by the credentialing committee pursuant to subsection D, paragraph 1 of this section is not a complaint of unprofessional conduct and shall not be disclosed by the board as a complaint on the licensee's complaint history.

F. If after completing its investigation the credentialing committee believes that the information is or may be true, the credentialing committee may recommend that the board enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the

practice of behavioral health. A consent agreement may also require the licensee to successfully complete a board approved rehabilitative, retraining or assessment program.

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

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

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

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

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

I. If on receipt of a credentialing committee's recommendation the board finds that the information provided pursuant to subsection A of this section is or may be true, the board may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee'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, the board may order a summary suspension of the licensee's license pending formal revocation proceedings or other action authorized by this section.

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

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

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

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

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client 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 terms of probation or a consent agreement.

5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

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

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

M. A letter of concern is a public document.

N. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally 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 all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.

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

health services, the board shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

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

Q. Notice of a complaint and hearing is effective by a true copy of the notice being sent by certified mail to the licensee'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.

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

S. The board may defer action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing to practice restrictions and treatment and monitoring programs deemed necessary by the board to protect the public health and safety. A licensee who is impaired and who does not agree to enter into an agreement with the board is subject to other action as provided pursuant to this chapter.

T. Subject to an order duly entered by the board, a person whose license to practice behavioral health has been suspended or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals apply to the board for reinstatement of the license. The person shall submit the application in writing and in the form prescribed by the board. After conducting an investigation and hearing, the board may grant or deny the application or modify the original finding to reflect any circumstances that have changed sufficiently to warrant modification. The board may require the applicant to pass an examination or complete board imposed continuing education requirements or may impose any other sanctions the board deems appropriate for reentry into the practice of behavioral health.

U. A person whose license is revoked, suspended or not renewed must return the license to the offices of the board within ten days after notice of that action.

V. The board may enforce a civil penalty imposed pursuant to this section in the superior court in Maricopa county.

W. For complaints being brought before a credentialing committee or the full board, the information released to the public regarding an ongoing investigation must clearly indicate that the investigation is a pending complaint and must include the following statement:

> Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit or not of sufficient seriousness to merit disciplinary action against the licensee and are dismissed.

Sec. 15. Section 32-3442, Arizona Revised Statutes, is amended to read:

32-3442. Disciplinary action; interviews; hearings; penalties; files

A. The board may investigate any evidence and determine whether a licensee is or may be guilty of unprofessional conduct or is or may be incompetent. Any occupational therapist, occupational therapy assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the occupational therapist, occupational therapy assistant, health care institution or individual may have that appears to show that an occupational therapist or an occupational therapy assistant is or may be guilty of unprofessional conduct or is or may be incompetent. A person who provides information to the board in good faith is not subject to an action in civil damages as a result of providing the information. If requested, the board shall not disclose the identity of a person who provides information unless the information or the name of a person making a complaint is essential to proceedings conducted pursuant to this section or unless required by a court of law.

B. Within sixty days of receipt the board shall notify the licensee about whom information as described in subsection A of this section has been received as to the content of the information. The board shall keep a complaint confidential until it verifies or substantiates the complaint.

C. If, in the opinion of the board, it appears that a licensee is or may be in violation of this chapter, the board may request an informal interview with the licensee concerned. If the licensee refuses the invitation or if the licensee accepts the invitation and if the results of the interview indicate that a civil penalty or suspension or revocation of a license may be in order, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. If, at the informal interview, the board finds a violation of this chapter, but not of sufficient seriousness to merit a civil penalty or suspension or revocation of A license, it may take one or more of the following actions:

1. Issue a decree of censure.

2. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include:

(a) Submission of the licensee to examinations to determine the mental or physical condition or professional competence of the licensee.

(b) Occupational therapy training or education ~~which~~ THAT the board believes to be necessary to correct deficiencies found either pursuant to a hearing or through an examination pursuant to this section.

(c) Review or supervision of the licensee's practice ~~which~~ THAT the board finds necessary to identify and correct deficiencies in the practice.

(d) Restrictions ~~upon~~ ON the nature and scope of practice to ensure that the licensee does not practice beyond the limits of the licensee's capabilities.

3. Issue a letter of concern. For the purposes of this paragraph, "letter of concern" means a nondisciplinary advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the licensee's license.

4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

D. Probation, if deemed necessary, may also include temporary suspension or restriction of the licensee's license to practice. Failure to comply with probation is cause for a hearing pursuant to title 41, chapter 6, article 10, based ~~upon~~ ON failure to comply with probation or any other acts or conduct in violation of this chapter and rules adopted pursuant to this chapter.

E. If, in the opinion of the board, it appears that a licensee is or may be in violation of this chapter, the board may hold a hearing in accordance with title 41, chapter 6, article 10 in lieu of or in addition to an informal interview as provided in subsection C of this section.

F. At the licensee's expense the board may require any combination of a physical, mental or occupational therapy competence examination as part of a board investigation, including, if necessary, the taking of depositions as may be required to fully inform itself with respect to the allegations presented by the complaint. These examinations may include biological fluid testing.

G. Any licensee who, after a hearing, is found guilty of unprofessional conduct or incompetence is subject to a decree of censure, probation as provided in this section, suspension of license, revocation of license, imposition of a civil penalty of not less than two hundred fifty dollars nor more than ten thousand dollars for each violation of this chapter or any combination of these sanctions 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 as is just in the circumstances.

H. A revoked or suspended license shall be returned to the board within fifteen days after it is revoked or suspended.

Sec. 16. Section 32-3553, Arizona Revised Statutes, is amended to read:

32-3553. Disciplinary action; duty to report; immunity; proceedings; board action

A. The board on its own motion may investigate any evidence that relates to a licensee and that appears to show the existence of any of the causes for disciplinary action prescribed in section 32-3552 or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care. A licensed respiratory care practitioner or a health care institution as defined in section 36-401 shall, and any other person may, report to the board information the licensed respiratory practitioner, health care institution~~,~~ or individual may have ~~which~~ THAT appears to show the existence of any of the causes for disciplinary action prescribed in section 32-3552 or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care.

B. A licensed respiratory care practitioner, a health care institution or any other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting the information, and on request the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution ~~which~~ THAT fails to report as required by this section to the institution's licensing agency.

C. Within ninety days of receipt of information, the board shall notify the licensed respiratory care practitioner about whom information has been received as to the content of the information.

D. A health care institution shall inform the board ~~when~~ IF a licensed respiratory care practitioner is terminated due to a cause listed in section 32-3552, along with a general statement of the reasons ~~which~~ THAT led the health care institution to take the action.

E. If the board finds, based on the information it receives pursuant to 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 order a summary suspension of a license pending proceedings for revocation or other action. If an order of summary suspension is issued, the licensee shall also be served with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee, and is entitled to a formal hearing before the board on the charges within sixty days.

F. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the license of the licensed

respiratory care practitioner, it may take ~~either~~ ANY of the following actions:

1. Dismiss the complaint if the board believes that the information is without merit.

2. File a letter of concern if the board believes that while there is insufficient evidence to support direct action against the license of the licensed respiratory care practitioner there is sufficient evidence for the board to notify the licensee that continuing the activities ~~which~~ THAT led to the information being submitted to the board may result in action against the license.

3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

G. If after completing the investigation the board believes that the information provided pursuant to this section is or may be true, the board may request an interview with the licensee. If the licensee refuses this request or is interviewed and the results indicate that suspension or revocation of the license might be in order, the board shall issue a formal complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10. If, after completing the informal interview, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit suspension or revocation of the license, it may either dismiss the complaint if it believes it is without merit or take any combination of the following actions:

1. File a letter of concern if the board believes that while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities ~~which~~ THAT led to the information being submitted to the board may result in action against that person's license.

2. Issue a decree of censure, which constitutes an official action against the respiratory care practitioner's license.

3. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensed respiratory care practitioner concerned.

4. Restrict the licensee's practice to specific settings in a manner the board determines best protects the public health and safety.

5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

H. Failure to comply with probation is cause for initiation of a formal proceeding for suspension or revocation of a license pursuant to this section based on the information considered by the board at the informal

interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted pursuant to this chapter.

I. If the board finds that the information provided pursuant to this section warrants suspension or revocation of a license issued under this chapter, the board shall immediately initiate formal proceedings for the revocation or suspension of the license as provided in title 41, chapter 6, article 10. At the conclusion of that hearing the board may dismiss the complaint or revoke or suspend the license and may take any combination of actions listed in subsection G of this section.

J. In connection with the board investigation the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of any person being investigated, or the reports, the records and any of the documents maintained by and in the possession of any hospital, clinic, physician's office, or other public or private agency, and any health care institution as defined in section 36-401, that relate to the person's professional competence, unprofessional conduct or mental or physical ability to safely practice respiratory care. These requests shall be made in writing.

K. Patient records, hospital records, medical staff records, medical staff review committee records, clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to the care of patients, any information from which a patient or a patient's family may be identified or information received or reports kept by the board as a result of the investigation procedure prescribed in this chapter and testimony concerning these records and proceedings relating to their creation are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use and legal actions as are the original records in the possession and control of the hospital, the health care institutions or health care providers or other individual, practitioner or agency from which they are secured. The board shall use ~~such~~ THE records and testimony during the course of investigations and proceedings pursuant to this chapter.

Sec. 17. Section 32-3951, Arizona Revised Statutes, is amended to read:

32-3951. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The board may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Conviction of a felony or a misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.

2. Securing a license under this chapter through fraud or deceit.

3. Unprofessional conduct or incompetence in the conduct of the licensee's practice.

4. Using a false name or alias in the practice of the licensee's profession.

5. Violating this chapter or board rules.

B. If the board determines pursuant to a hearing that grounds exist to revoke or suspend a license, the board may do so permanently or for a fixed period of time and may impose conditions prescribed by the board. The board may also impose a civil penalty of not more than ten thousand dollars for each violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this subsection in the state general fund.

C. The board may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The board shall conduct any hearing to revoke or suspend a license pursuant to title 41, chapter 6, article 10. Any person appearing before the board may be represented by an attorney.

E. Instead of denying, revoking or suspending a license the board may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee. THE BOARD MAY ALSO ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

F. The board shall promptly notify a licensee's employer if the director initiates a disciplinary action against the licensee.

G. The board may appoint an investigator to provide information to the board concerning an alleged violation of this chapter.

H. The board on its own initiative or on application of any person involved in an investigation or proceeding conducted by the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents, reports, records or any other evidence relating to a board investigation or proceeding.

Sec. 18. Section 32-4103, Arizona Revised Statutes, is amended to read:

32-4103. <u>Board; powers and duties; direction of athletic trainers; continuing education requirements</u>

A. The board shall:

1. Evaluate the qualifications of applicants for licensure.

2. Designate the national examination that it requires applicants to pass.

3. Issue licenses to persons who meet the requirements of this chapter.

4. Establish requirements pertaining to the ratio between supervising athletic trainers and student athletic trainers.

5. Regulate the practice of athletic training by interpreting and enforcing this chapter.

6. Establish requirements for assessing the continuing competence of licensees.

7. Adopt and revise rules to enforce this chapter.

8. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

9. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

11. Maintain a current list of all licensees. This list shall include the licensee's name, current business and residential addresses, telephone numbers and license number.

12. Enter into contracts for services necessary to enforce this chapter.

13. Publish, at least annually, final disciplinary actions taken against a licensee.

14. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules.

15. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

B. The board shall adopt rules to prescribe the direction of athletic trainers by licensed physicians including physician recommendations, guidelines and instructions as to standard protocols to be followed in the general, day-to-day activities in which athletic trainers engage. These rules shall require that postathletic injury treatment direction be provided by the person's treating physician or, if applicable, by the team physician for the institution or organization that employs the athletic trainer. If appropriate, athletic trainers may also seek direction as to the treatment of an athletic injury from any health care provider who is involved in that person's treatment and who is not licensed pursuant to this chapter but who is licensed pursuant to this title.

C. The board may adopt rules to prescribe continuing education requirements for licensure renewal, INCLUDING A RULE TO ALLOW THE BOARD TO WAIVE CONTINUING EDUCATION REQUIREMENTS FOR REASONS OF EXTREME HARDSHIP.

Sec. 19. Section 32-4122, Arizona Revised Statutes, is amended to read:

32-4122. <u>Qualifications for licensure; exemption from examination and clinical experience requirements; exemption</u>

A. An applicant for a license as an athletic trainer shall:

1. Be of good moral character.
2. Have completed the application process.
3. Possess a minimum of a baccalaureate degree from an accredited institution with course work and supervised clinical experience as required and approved by the board.
4. Have passed a national examination approved by the board within one year before the date of application or currently possess certification as an athletic trainer from a nationally recognized board of certification.

B. Notwithstanding the requirements of subsection A, if a person who applies for a license under this article is certified as an athletic trainer by a nationally recognized board of certification before January 1, 2004, and is otherwise qualified for licensure under this chapter, the board may exempt the person from any examination or supervised clinical experience requirements.

C. THE BOARD MAY EXEMPT A PERSON FROM THE DEGREE AND EXAMINATION REQUIREMENTS OF SUBSECTION A, PARAGRAPHS 3 AND 4 IF THE PERSON EITHER:

1. WAS EMPLOYED BY A PROFESSIONAL SPORTS ORGANIZATION ON OR BEFORE JULY 18, 2000 TO PERFORM ATHLETIC TRAINING AND HAS BEEN CONTINUOUSLY OR REPEATEDLY EMPLOYED BY THAT ORGANIZATION SINCE THAT DATE TO PERFORM ATHLETIC TRAINING.
2. WAS CERTIFIED ON OR BEFORE JULY 18, 2000 BY A FOREIGN CERTIFICATION ORGANIZATION THAT HAS A MUTUAL RECOGNITION AGREEMENT WITH A NATIONALLY RECOGNIZED BOARD OF CERTIFICATION AND HAS BEEN CONTINUOUSLY CERTIFIED BY THAT ORGANIZATION SINCE THAT DATE.

Sec. 20. Section 32-4152, Arizona Revised Statutes, is amended to read:

32-4152. Use of titles; restrictions; violation; classification

A. An athletic trainer shall use the letters "AT/L" or "L/AT" in connection with the athletic trainer's name or place of business to denote licensure under this chapter.

B. A person or business entity or its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business the words "athletic training" or "athletic trainer", the letters "AT/L", "L/AT", "ATC/L", "L/ATC", "A.T.", "L.A.T." or "A.T.L." or any other words, abbreviations or insignia indicating or implying directly or indirectly that athletic training is provided or supplied unless the services are provided by ~~or under the direct supervision of~~ an athletic trainer licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.

Sec. 21. Section 32-4254, Arizona Revised Statutes, is amended to read:

32-4254. Investigative powers; emergency action; disciplinary proceedings; formal interview; hearing; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a licensee is or may be incompetent or is or may be subject to discipline under this chapter. On written request of a complainant, the board shall review a complaint and take any action it deems appropriate. The board or the executive director shall notify the licensee as to the content of the complaint as soon as reasonable. A licensee shall, and any other person may, report to the board any information the person may have that appears to show grounds for disciplinary action against a licensee. 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 licensee to fail to report as required by this section.

B. If the board finds, based on the information it receives under subsection A of this section, that the public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, the board may restrict, limit 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.

C. 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 licensee, the board or a board committee may take ~~either~~ ANY of the following nondisciplinary 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. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

D. If the board finds that it can take rehabilitative or disciplinary action without the presence of the licensee at a formal interview it may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and

ensure the licensee's ability to safely engage in the practice of massage therapy. The board may also require the licensee to successfully complete a board approved rehabilitative, retraining, continuing education or assessment program.

E. If, after completing its investigation, the board believes that the information is or may be true, it may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee'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.

F. 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 one or more of 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. File a letter of reprimand.

4. Issue a decree of censure. A decree of censure is an official action against the licensee's license.

5. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months or restriction of the licensee's license to practice massage therapy. 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 on any other acts or conduct alleged to be in violation of this chapter or rules adopted pursuant to this chapter, including noncompliance with the terms of probation, a consent agreement or a stipulated agreement.

6. Enter into an agreement with the licensee to restrict or limit the licensee's practice in order to rehabilitate, retrain or assess the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of massage therapy.

7. Order the payment of restitution, including an order to repay fees paid by a massage therapy client and for the cost of the investigation.

8. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING 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.

G. If the board finds that the information provided in subsection A or ~~F~~ E of this section warrants suspension or revocation of a license issued pursuant to this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10. If after a formal proceeding the board finds that a licensee has been convicted of prostitution, solicitation or another similar offense, the board shall revoke the license.

H. In a formal interview pursuant to subsection E of this section or in a hearing pursuant to subsection G of this section, the board in addition to any other action may impose a civil penalty of at least one thousand dollars but not more than ten thousand dollars for each violation of this chapter or a rule adopted pursuant to this chapter.

I. An advisory letter is a public document.

J. A licensee who after a formal hearing is found by the board to be subject to discipline pursuant to this chapter is subject to censure, probation or restitution as provided in this section, suspension or revocation of license or any combination of these, including a stay of action, for a period of time or permanently and under conditions 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 a licensee who it finds to be in violation of this chapter.

K. If the board, during the course of any investigation, determines that a criminal violation involving the practice of massage therapy may have occurred, it shall make the evidence of a violation available to the appropriate criminal justice agency for its consideration.

L. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties paid pursuant to this section in the state general fund.

M. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the licensee'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 after that date.

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

1. Being unable to safely engage in the practice of massage therapy.

2. Having committed an act subject to discipline pursuant to this chapter.

3. Having violated this chapter or a board rule.

O. 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 ARPIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.

Passed the House January 30, 20 07

by the following vote: 49 Ayes,

7 Nays, 4 Not Voting

Speaker of the House

Pro Tempore

Chief Clerk of the House

Passed the Senate April 3, 20 07

by the following vote: 20 Ayes,

8 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

at _____o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

H.B. 2115

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 10, 2007,

by the following vote: 50 Ayes,

8 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of April, 2007,

at 11:25 o'clock a. M.

Secretary to the Governor

Approved this 16 day of

April, 2007,

at 2 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 16 day of April, 2007,

at 4:56 o'clock P. M.

Secretary of State

H.B. 2115